United States Court of Appeals for the Second Circuit



APPELLANT'S APPENDIX

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74-2319

United States Court of Appeals FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

THOMAS MATTEO,

Defendant-Appellant.

APPELLANT'S APPENDIX

Preminger, Meyer & Light
Attorneys for Appellant
66 Court Street
Brooklyn, New York 11201
212 834-8888



PAGINATION AS IN ORIGINAL COPY

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C	ounsel for the	deft pre	esent -	deft BREEN &	rraigned an	d ent	ers	а	
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177	for trial.								
21-74 B	ench Warsant r	etd and	filed -	executed (Bro	een)				
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74 CR 122

	PROCEEDINGS		CLER	K'S PEES	
3-7-74	Refore Wichley Ch 1	PLAIR	TIPP	DEPEN	MADI
	case carred - dert & counsel by	esent	-		
	deft arraigned and enters a plea of not guilty - bail	condi	1110	ns	
3-7-74	contd - April 22, 1974 for trial. (THOMAS MATTEO)				
	Notice of Appearance filed. (THOMAS MATTEO)				
2-1-14	Magistrate's file 74 M 278 inserted into CR file.				
-23-/4	Certificate of Engagement filed (Herbert Krohn, atty f	or de	Et 1	atte	5
	and letter dated Mar. 25, 1974 to counsel Herbert Kroh	n re	def		
	Frank Breen etc. from Ch. Judge Mishler				1
-4-74	Before MISHLER, CH.J Case called- Deft and counsel p	rese	nt-	Deft	nn
	the gove the court of the court the court the		J- a	La	1
	trial set down for 4-22-74 is granted- Bail set at \$10	0.000	w 4	h wa	011
11 71	deft to sign as surety (INDIVIGLIO)	<u></u>	1	-11 W T	-
-4-74	Notice of appearance filed (INDIVIGLIO)			-	-
5-74	Before MISHLER, CH.J Case called - Deft and counsel p		-		-
	install is relieved and the court appointed took	7 44-	<u>-</u>	counse	1
-5-74	appointing counsel filed (pre-	T ATC	10	r der	B
-17-74	Magistrate's file 74 M 511 inserted into CR file.	EN)	6		
-19-74	Before MISHLER, CH J - case called - deft Matteo & cou				
	present - motion by deft for an adjournment of the car	nsel	H. KI	ohn	
	down for trial on 4-22-74. Motion granted and trial de				
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	June 10, 1974.	te a	djd	to	
22-74	June 10, 1974.				
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-22-14	June 10, 1974. Motion for severance filed (deft John Indiviglia) forwar Before Mishler, Ch J - case called - adjd to June 10.	rded	to	hanh	rs,
4-30-74	June 10, 1974. Motion for severance filed (deft John Indiviglia) forwar Before Mishler, Ch J - case called - adjd to June 10, Notice of readiness for trial filed	rded 1974	to	Chambe trial	-
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	AL DOCKET
DATE	PRIOCEEDINGS
	counsel for the witness McCormack - Brisl contd to 6-13-74.
5-13-74	Before MISHLER, CH.J Case called - Deft MATTRO and PREEN AND ADDRESS AND ADDR
	with counsel- Trial resumed- The witness McCormeck mcCormeck
	the oburt held him in contempt of court-Motton by
	to the breen for mistrial is granted with some to
	belled from the trial- Motion by Mr. Known for doct warner
	in criminal contempt of Court sentenced the witness to a term of im-
	prisonment for a period of one day- Govt rests- Motion bt deft MATTEO
6-14-7	to dismiss is denied- Deft rests-Trial contd to 6-14-74 at 10:00 A.M. Before MISHLER, CH J - case called - deft Matteo & counsel Herbert J Krohn present - trial resemble to the counsel
	Herbert J Krohn present - trial resumed - both sides rest - motion
	by deft MATTIO to dismiss the indictment is denied - at 3:20 PM the
20	Jury retared for deliberation at / 55 The denied - at 3:20 PM the
	Jury retared for deliberation-at 4:55 PM the jury returned and
	rendered a verdict of guilty as charged - Jury polled and Jury discharged - motion to set aside jury verdict is denied -Trial
	concluded - bail conditions contd - sentence adjd without date.
6-14-74	By MISHLER, CH J - Order of sustenance filed - Lunch (15 persons)
17-74	By MICHTED CH. 2. Sustenance 112 d - Lunch (15 persons)
9-74	Woucher formcompensation of counsel filed for deft BREEN.
-74	Total of counsellfiled (FOR witness McCorman)
21-74	Writ retd andfiled
-1-	Before MISHLER, CH.J Case called - Motion for discovery and inspec-
	- water and dealed in next as indicated
	Trial set for 7-12-74 as to defts Individe and
. 4.	
21-74	Notice of appeal or contempt charges as to witness James McCormack
01 -11	- 4204
21-74	Docket entries and duplicate of notice of appeal mailed to c of a
-27-74	by Mishler, Ch J - Order filed that the deft without to
	mereby committed/the custody of the Attanto
	The commence of the commence of the product of
	to the contempt, contempor is discharged for
2/20	receiel custody.
2/74	Copy of letter from C. Toy to Mr. Erlbaum filed.
12/74	Delote Mishier Chimcase called & addid to 0/10/11
15-74	Govts Notice of Readiness for Trial filed (BREEN & INDIVIDUAL) Defere MISHLER, CH. 3, - Case called - Sentence and to 5-13-74 on consent
74	Bofore MISHLER, CH.J Case called State (BREEN & INDIVIDUAL)
4	benteme and to 9-13-74 on consent

PROCEEDINGS

12-74 Refore MISHLER, CH J - case called - defts Breen & Indiviglio present with counsel - trial ordered and BEGUN - Jurors selected and sworn - Trial to be contd to 8-12-74. Hearing on motion to suppress held - hearing to be continued on 8-12-74.

T 70

-15-74

- with counsels hearing resumed and hearing concluded motion to suppress is denied trial resumed Trial contd to 8-14-74 at 1:00 PM.
- 8-14-74 Before MISHLER, CH J case called deftx BREEN not present counsel present deft INDIVIGLIO present with counsel bail is
 revoked as to deft BREEN and bench warrant ordered Motion by Mr.
 Krieger for deft BREEN FOR a severance is denied Motion by deft
 INDIVIGLIA for mistrial is denied trial resumed Deft BREEN arrived
 in court at 4:05 PM Govts. Ex. 38, 40, 41, 42, 43, 44, 45, 47, 48
 and 49 for Id. are received in evidence On motion by Mr. Krieger for
 delt BREEN the order of the Court to revoke bail and the ordering of
 the Bench Warrant is vacated trial contd to 8-15-74.
 - Before MISHLER, CH J case called defts present with counsels trial resumed Hearing on motion to suppress held as to deft BREEN motion to suppress is denied. Govt rests motion by the defts for a mistrial is denied motion by deft BREEN for a continuance is denied Motion by the defts to dismiss the indictment is denied Trial contd to 8-16-74 11 9:30 am. F.B.I. reports ordered sealed by the court for possible twice by the Court of Appeals on application by the Govt the bail is increased to \$75,000 surety company bond as to deft BREEN.
- ### Before MISHLER, CH J case called defts BREEN & INDIVIGLIA present with counsels trial resumed motion by deft BREEN for a mistrial is denied Both sides rest motion by defts for judgment of acquittal is denied-At 4:00 PM the Jury retired for deliberations at 9:25 PM the Jury returned and rendered a verdict of guilty as toxococcos as to each deftex -Jury polled and jury discharged all motions reserved to time of sentence sentences adjd without date trial concluded bail conditions continued.
 - By MISHLER, CH J 2 Orders of Sustenance filed (Luncheon & Dinner)

 5 Volumes of stenographers transcripts filed (one dated 8-12-74; owe dated

 Aug. 13, 1974; one dated 8-14-74 and one dated 8-15974.)
 - By Mishler, Ch J Order releasing beil filed (FRANK BREEN)

Charge tenhers Transcript dated 8-15-74 filed

DATE	PROCEEDINGS
9-13-74 9-24-74	Letters from deft Breent William Kilroy(surety) and cover letter
9/27/74	Judge Mishler to Theodore Krieger, esq. filed Before MISHLER, CH.J Case called - Motion argued to reduce bail - Motion denied
0-3-74	Voucher for Expert Services filed (Breen) Pre Trial hearings, etc. Voucher for Expert Services filed (Breen & Matteo) motion to
-	deft MATTEO to adjd the sentence is denied- motion argued to set aside the verdict etc. is denied- deft sentenced to a term of imprison ment for a period of 10 years and a special parole term of 5 years- Court advised de
0/4/74	before MISHLER, CH. J Case called - Defts and counsels present - Deft INDIVIGLIO'S motion to set aside the verdict, etc. is denied - deft sentenced to imprisonment for a period of 12 years and a special parole term of 5 years - Court advised deft of his right to appeal - Clerk to file notice of appeal with fee - Bail conditions contd pending appeal-
	sentence date argued- denied- deft sentenced to imprisonment for a period of 7k years and a special parole term of 5 years- Court advised deft of his right to appeal- Clerk to file notice of appeal without fee- Bail
	by Mr. and Mrs. Crichton and Mr. Kilroy-Deft MATTEO'S motion to adjd the sentence dated argued- denied- motion to set aside the verdict etc. is denied- deft sentenced to a term of imprisonment for a period of 10 years and a special parole term of 5 years- Court advised deft of his right
10/4/74	to appeal- Bail conditions contd pending appeal Judgments and Commitments filed- certified copies to Marshal (ALL DEFTS) Notice of appearance filed (MATTEO) Notice of appearance filed (w/fee INDIVIGLIO) (w/out fee BREEN)
/4/74 //11/74	Docket entries and duplicate of natics of appeal mailed to court of appeals (INDIVIGLIO and BREEN) Motice of appeal filed (MATTEO)
15-74	Docket entries and duplicate of notice of appeal mailed to court of appeals (MATTEO) Certified copy of Judgment & Commitment retd and filed - deft BREEN delivered to rederal Detention Headquarters.

UNITED STATES OF AMERICA DISTRICT COURT E.D. N.Y FEB 2.1 1974 .

-V8-

THOMAS MATTEO FRANK BREEN JOHN INDIVIGLIA,

INDICTION

21 U.S.C. §§173 174, 841, 846 18 U.S.C. §2

Defendants

74CR 122

THE GRAND JURY CHARCES:

COUNT I

On or about and between the 1st day of October, 1967 and the 27th day of September, 1972, both dates being approximate and inclusive, within the Eastern District of New York, the defendant THOMAS MATTEO, the defendant FRANK BRIEN and the defendant JOHN INDIVIGLIA, wilfully, unlawfully and knowingly did combine, conspire, confederate and agree together and with each other and with Frank Aguiar and James Mc Cormack and with others to violate prior to May 1, 1971, Sections 173 and 174 of Title 21, United States Code, and on and after May 1, 1971, to violate Sections 812, 841(a)(1), 841(b)(1)(A), 951(a)(1) and 952 of Title 21, United States Code.

- 1. It was part of the said conspiracy that prior to May 1, 1971, the defendants unlawfully, wilfully and knowingly would receive, conceal. buy, sell and facilitate the transportation, concealment and sale of a quantity of narcotics drugs, to wit, heroin, the exact amount thereof being to the Grand Jury unknown after the said narcotic drugs had been imported and brought into the United States in violation of Sections 173 and 174 of Title 21, United States Code.
- 2. It was further a part of said conspiracy that on and after May 1, 1971, the said defendants unlawfully, wilfully and knowingly would distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the Eastern District of New York and elsewhere.

- 1. On or about February 1, 1968, the defendant THOMAS MATTEO met with co-conspirator James Mc Cormack and the defendant JOHN INDIVIGLIA at the home of Mc Cormack in the Eastern District of New York.
- 2. On or about and during the month of November, 1969, the defendant FRANK BREEN met with co-conspirator Frank Aguiar at Aguiar's home in the Eastern District of New York.
- 3. On or about and during the month of May, 1971, the defendant THOMAS MATTEO, met with co-conspirator Frank Aguiar at Aguiar's home in the Eastern District of New York.
- 4. On or about September 26, 1972, the defendant THOMAS MATTEO spoke telephonically with co-conspirator Frank Aguiar in the Eastern District of New York.
- 5. On or about September 27, 1972, the defendant THOMAS MATTEO travelled and entered the home of defendant JCHN INDIVIGLIA in the Eastern District of New York.

A TRUE BILL

FOREL'AU

EDIARD J. DOTO 50

UNITED STATES ATTORNEY

into the courtroom.)

THE COURT: Will you please swear him in?

MR. CHREIN: Before Mr. McCormack is sworn,

your Honor, I believe I represented him in connection
with another matter.

THE COURT: Let's put it all on the record.

MR. MC CORMACK: Mr. Chrein?

MR. CHREIN: Yes.

MR. MC CORMACK: Right.

JAMES

MC CORMACK, called as a witness, having been first duly sworn by the deputy clerk, testified as follows:

THE WITNESS: Am I required to swear in, your Honor?

THE COURT: Do you refuse to take the oath?

THE WITNESS: There is something I would like to say first.

THE COURT: Surely.

THE WITNESS: This morning, when they picked me up at West Street to take me to court, I asked why I was going, and I asked to see the paper or writ or whatever was supposed to bring me.

I was assaulted by a Lieutenant Coffee in West Street. I have the names of 6 witnesses here

who witnessed the assault.

He said, when I was returned to West Street that he was going to -- are there women present?

THE COURT: That's all right, go ahead.

THE WITNESS: He said that he was going to beat the shit out of me and put me in the hole.

Now, I have 6 witnesses. I spoke very respectfully. All I asked was to see the writ that was brought me down.

I was flown down against my wishes from
Dannamora, from state prison. I am serving 15

years. No one has informed me what this matter is
all about. No one has shown me the least bit of
respect. I have been abused at West Street and right
now I am highly agitated.

THE COURT: Would you rather I ask you the questions later on? I understand that you were addicted to drugs. Is that part of it?

THE WITNESS: I have been away for three years. I am not addicted to any kind of drugs.

THE COURT: All right, suppose you sit down.

THE WITNESS: I would like to also have an attorney, because I want to press charges against the lieutenant in West Street. I want to be protected

when I go back to West Street.

THE COURT: Well, I don't know whether I can give you an attorney to bring an action against the officer that you say assaulted you.

THE WITNESS: It is the responsibility of the Government by bringing me down, to protect me from these racist fools over there who think they are going to -- I will tell you, if they put their hands on me I am going to fight, and then there is going to be an assault on me. I want to press an assault charge against that lieutenant right now.

THE COURT: All right, please sit down and let me give you a few instructions.

I can't, at this time, entertain any application to assign counsel to bring an action. But if you say you require counsel to advise you of your constitutional rights as a witness in this trial, then I will assign counsel for that purpose.

THE WITNESS: I understand my constitutional rights. I am saying that I was brought down from Dannamora. I was rushed on a plane without a chance to get any personal belongings. No one explained anything. They showed a body order. I honored the body order.

When I was brought down no one explained

anything. They brought me to court here Monday.

Let me sit in the bullpen like an animal for a few hours and then brought me back.

I have constantly been asking these officers over there, but some of them seem to have attitudes. They have some trouble over there. Some kind of racial -- it's none of my business. I am doing my time upstate. I have no wish to cause anyone any trouble.

THE COURT: But the point is --

THE WITNESS: The point is I was assaulted this morning.

THE COURT: That you can bring an action on later.

THE WITNESS: I was brought down -- am I under the jurisdiction of the attorney general?

THE COURT: Right now you are under the jurisdiction of this court. You were writted down on a writ signed by this Court.

THE WITNESS: Isn't it the Court's responsibility to protect my rights and welfare?

THE COURT: I can only answer it this way, that

I am not counsel to anyone. I will appoint counsel

in this case to advise you as to your constitutional

rights.

Now, let me say this, every individual has the obligation to testify. The only bar, and the only protection you have is your right against self-incrimination.

Now I don't know whether you intend to testify here. But apparently, if you were brought down by the Government, they have the impression that you were ready to testify.

(continued next page.)

Aguiar

MR. McCORMACK: No one has spoken to me, I have been upstate for a couple of years, Mr. Weintraub spoke to me on the phone --

THE COURT: Well, that is it.

Mr. Weintraub, would you like to say something?

MR. WEINTRAUB: Pardon me?

THE COURT: Would you like to say something?

MR. WEINTRAUB: I think the record should reveal that shortly after I got this case last week, I writted him in, your Honor signed a writ asking that Mr. McCormack be brought in.

MR. McCormack: Without you knowing me.

MR. WEINTRAUB: Then I received a call from the marshals, telling me that Mr. McCormack was here but didn't want to cooperate, didn't want to testify, dith't want to see me, and I spoke to him on the phone briefly at which time he related the same things to me and said he didn't want to speak to me about this matter, and I pursued it no further at tha point.

THE COURT: Did you represent this witness?

MR. CHREIN: I represented this witness in

connection with two indictments before Judge Rosling

which were later transferred to Judge Neaher; I didn't

represent him in connection with his present

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incarceration.

MR. McCORMACK: No, that is another charge in Queens.

THE COURT: That is a State Court matter.

MR. CHREIN: I represented him in connection with matters before this Court and for which he received probation.

THE COURT: Does it have any relevancy?

MR. McCORMACK: I received five years there --

MR. CHREIN: If he were to testify, as

Mr. Weintraub indicated, I don't know that he is

going to testify or not, but if he testifies in the

tenor which Mr. Weintraub indicated, I have material

that I obtained through my previous relationship

with him which can impeach his character, and I

would feel that I could not use it, in view of my

past relationship with this defendant, because it

would be hard to say how I obtained this material,

either from my former relationship or through

independent investigation.

I think the Court realized the position I am placed in.

THE COURT: There are ways of dealing with that, too; I really don't think it will be a problem,

if Mr. McCormack understandably waives that privilege, then you can examine him, and if you can examine him on the information, and it is material, that cannot hurt the defendants, so there will be no conflict.

Sometimes it helps a defendant --

MR. CHREIN: There would be another problem:

If there were any indication to the jury that I had a former relationship as attorney for Mr. McCormack, and your Honor k nows that the jury does not know that I am an assigned attorney and that I am assigned a number of cases here, but the jury might feel that I am on a retainer for this ring, and if they feel that I represented him on a former occasion and I am sitting next to Mr. Breen --

THE COURT: Why should they get that impression?

MR. CHREIN: They might establish a connection between these two bythe fact that they share a common lawyer.

THE COURT: Everything in the world is possible and particularly if you are to speculate on what a jury might or might not think, but what are the probabilities?

MR. CHREIN: I think substantial, your Honor.

The usual procedure is, before accepting an assignment, and that I did in this case, would be to request of the government any information concerning my former relationship with any potential witnesses.

Now Mr. Ritchie assured Mr. Guzman before our office actually took this assignment that there was no such problem; it is not as if we did not try to forestall this situation.

THE COURT: When you spoke to Mr. McCormack, did he indicate that he would testify in this trial?

MR. MCCORMACK: I haven't spoken to Mr. Chrein.

MR. CHREIN: The name, McCormack, is not unusual --

THE COURT: I am talking to Mr. Weintraub.

MR. WEINTRAUB: When I spoke to him on Friday he indicated that he would not testify.

THE COURT: Why did you bring him down, then?

MR. McCORMACK: That is what I would like to

know.

THE COURT: I will ask the questions.

MR. MCCORMACK: I am sorry.

THE COURT: Why did you bring him down?

MR. WEINTRAUB: Mr. McCormack had testified

previously in a grand jury, and the government has acquired a grant of immunity to require him to testify.

THE COURT: Don't you think he has a Fifth

Amendment right not to testify? On the trial?

Do you think that a waiver before the grand jury constitutes a waiver in this trial?

MR. WEINTRAUB: I have just stated that we have acquired authority to seek a formal immunity pertaining to this case, as far as Mr. McCormack is concerned.

THE COURT: Have you obtained the immunity?

MR. WEINTRAUB: I have obtained the authorization from Mr. Henry Peterson, Assistant Attornsy

General, Criminal Division.

THE COURT: When will the application be made before me?

MR. WEINTRAUB: The application is prepared to be made rightnow, your Honor.

THE COURT: You have the formal application?

MR. WEINTRAUB: Yes, I do, your Honor.

MR. McCORMACK: Excuse me, your Honor. Before
we go into that, I don't know what is going on hereTHE COURT: I will explain it all to you.

I think it is more important that I appoint counsel so that he can explain it to you.

MR. McCORMACK: I am concerned with my welfare, with my life.

You have a lieutenant who is a racist officer in West Street, I don't know if you are aware --

THE COURT: I am pretty much aware of what is going on at West Street, I know the warden, Warden Gangler, I am very aware of the conditions, I know the conditions better than you do.

MR. McCORMACK: I spent seven months there.

THE COURT: I know the situation there since
I have been on the bench 13 and a half years, and I
have heard inmates complain and I have listened to
their complaints, I have been there three or four
times --

MR. MCCORMACK: I have the name of an officer and six other inmates who witnessed it ---

THE COURT: Thatis a different problem.

You can sue the officer.

MR. McCORMACK: Sue them? I may not be alive to sue them.

THE COURT: I will see that you get the necessary protection.

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I will direct the United States Attorney to see to it that this witness is protected.

If there is any probability of any kind of assault or any danger to this witness, then you see to it that he is properly protected. If it is necessary to put him in another institution, put him--

MR. McCORMACK: I don't want to go to another location.

He said he would put me in a box --

THE COURT: What you say is most interesting to me and yourself, but you don't seem to understand that I have other business that is, the business of getting this trial continuing to completion.

MR. McCORMACK: I understand that.

THE COURT: I have an obligation to advise you of your constitutional rights and to advise you as to what rights you don't have, too, so that you understand the punishment in the event you refuse to testify.

Now do you have an application to grant immunity to this witness?

MR. WEINTRAUB: Yes, your Honor, I do.

THE COURT: May I see it?

MR. WEINTRAUB: You have it.

THE COURT: Oh, I am sorry.

MR. WEINTRAUB: It is attached to that order, and the affidavit is not sworn, and I have just signed it, and I am prepared to swear to it, your Honor.

THE COURT: Since a complaint was made yesterday that the United States Attorney must be aware of the application, I insist that Mr. Trager sign them.

You have him sign this so I know he is aware.

MR. WEINTRAUB: Yes, your Honor.

THE COURT: In the event that immunity is granted to you, it means that you cannot refuse to answer questions because of your right against self-incrimination because in exchange for immunity you lose your right against self-incrimination, so if a question is asked and you refuse to answer, after direction by the Court, you will be committing a contempt of court, and if you commit a contempt of court, you may be summarily sentenced to a term not exceeding six months.

MR. McCORMACK: You can give me six months right now.

THE COURT: Well, first I'm going to inform you because I intend doing that very thing,

Mr. McCormack --

MR. McCORMACK: Okay.

THE COURT: (continuing) -- and the six months will run consecutively.

MR. McCORMACK : Well, I am --

THE COURT: We must understand each other about the six months --

MR. McCORMACK: I don't think you understand what my position is.

THE COURT: I will see that you are properly protected and will try to allay your fears.

MR. McCORMACK: I would like to have appointed an attorney right now.

THE COURT: We are doing the best we can.

We don't have instant counseling services.

MR. McCORMACK: Okay.

(continued on following page)

THE COURT: I have to find a lawyer who is available, and I think, able to protect your rights and the probability arises --

MR. MC CORMACK: Do I have the right to press assault charges against an officer that abused me and assaulted me this morning?

THE COURT: Of course you have that right.

MR. MC CORMACK: That is what I would like to do.

THE COURT: That concerns the United States
Attorney's office, I am not the prosecuting officer
here, I am only a Judge.

MR. MC CORMACK: Mr. Weintraub, can I speak to you?

THE COURT: You are interested in pressing the charges and not listening to what I have to say about your refusing to testify; you are more interested in pressing the charge.

MR. MC CORMACK: Is this a trial, your Honor?
THE COURT: This is a hearing outside of the
trial, the trial is going on.

I will appoint an attorney to properly
advise you, and then you will be called back into
court and I will give you another opportunity at that

time. If you refuse to answer questions properly
put to you, I may direct you to answer, and if you
refuse to do so, you will be in contempt of court
and be subject to a penalty of six months imprisonmen

As I say, I intend to impose that sentence, and it will run consecutive to your State prison term.

I want you to fully understand that because in the past, when I have done it, the witness has written me and said, Well, I'm going to be released, and I have spent a long time here, and there is no sense in giving me an extra six months.

My answer to that is;

When I told you that, I made it very clear that you failed to fulfil the obligation that you had, you refused to answer questions properly put to you, and I mean that six months could be an additional term.

So now that you understand it clearly -- MR. MC CORMACK: Okay.

THE COURT: (continuing) -- I will appoint counsel for you, if I can.

One more question:

Have you been in touch with the defendant

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here?

You don't have to answer that if you don't want to.

MR. MC CORMACK: I refuse to answer.

MR. CHREIN: Might I also request that the attorney who is appointed to represent Mr. McCormack be advised to discuss the question of the waiver of privilege with him?

THE COURT: Oh, surely.

MR. CHREIN: And to discuss the waiver of the attorney-client privilege in addition, that is in addition to the Fifth Amendment privilege.

THE COURT: That is right. The question may be most. I don't know what course this examination will take. You may not have much opportunity to cross examine this witness, I don't know.

MR. CHREIN: I think my most harrowing experience in that regard was in this very courtroom where a former client of mine was called unexpectedly to testify against the client I represented --

THE COURT: If you remember, I had --

MR. CHREIN: (continuing) -- I waived the privilege then, but --

THE COURT: I had a Suffolk County lawyer, a

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retained counsel, I for jet his name, cross examining a Covernment witness, and during the examination, the witness said, "You were my attorney," and he had recorded a conversation that he wanted to use against the Government witness, and I permitted it, and then the convicted defendant claimed the conflict of interest, and the Court of Appeals said there may have been, but it wasn't prejudicial, he actually had an advantage.

So I say it may turn out that your client may have an advantage if this witness waives his privilege.

MR. CHREIN: That would depend on whether or not he waives.

THE COURT: The other possibility, on the other hand, is, that you will never have the opportunity to cross examine, you may never have an examination, and in that event, I won't have to re-study the question.

MR. CHREIN: That would cause other questions, too.

with those questions before me, those questions which aren't before me I wouldn't even attempt to

answer.

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All right.

Will you see to it that the witness is properly protected in this courthouse and wherever else he is in custody?

I think we do have an obligation, we have a State prisoner, to see that he isn't placed in fear of any kind.

MR. WEINTRAUB: Yes, your Honor.

THE COURT: And I assume that the marshals understand my instructions.

I will call Warden Gangler and see if he knows of anything, and if it is convenient to house him in any other facility, I may very well do it, --

MR. MC CORMACK: Your Honor --

THE COURT: (continuing) -- just as a precaution.

MR. MC CORMACK: Your Honor?

THE COURT: Yes.

MR. MC CORMACK: Like I say, I am a little agitated, I am trying to make myself clear, I don't want any separation, I am doing fine in the population in West Street, the trouble that I had had nothing to do with any inmates there, I don't

want to be transferred to any other facility.

I didn't want to be brought down here, I think I should have been shown the courtesy of somebody talking to me before they flew me down, but besides that, the trouble I am having is only with a racist lieutenant.

THE COURT: Do you care to identify him? Can you tell us what his name is?

MR. MC CORMACK: His name is Lieutenant Coffee, he was in the receiving room this morning, and --

THE COURT: Coffee, Coffee?

MR. MC CORMACK: Coffee, Coffee, ves.

I have an officer who witnessed it and I have the names of six other inmates who are willing to come into this court and testify to what happened, I was very respectful, all I said was, that I wanted to know why I am going to court and if they have a body order or a court order.

I felt I was entitled to see that.

He says, "Get in that --" -- well, he says, "Get in that God-damned bullpen or I'll kick your fucking ass."

I said, "You are not going to kick anybody's

ass."

And he pushed me into the bullpen before I even --

THE COURT: You will agree that there are no indications on your body or face?

MR. MC CORMACK: There was no beating.

THE COURT: A pushing, is that what it was?

MR. MC CORMACK: No, he said, "When you return from court, you are going to be put in the box and then we'll see what happens."

THE COURT: I will talk to Warden Gangler and make certain --

MR. MC CORMACK: I just want to go back to West Street and go back in the tank where I was and not be bothered by this -- I did -- I did nothing wrong, I didn't commit any infraction of the rules.

I am serving 15 years in Dannamora, I was brought up here, I have been acting like a gentleman.

I think I spoke to you like a gentleman, like a gentleman on the phone --

MR. WEINTRAUB: I will agree with that.

MR. MC CORMACK: Right.

For some guy that may be a racist or whatever

his reasons are to impress other guys, all I want to do is to be left alone and go back, I mean in the tank.

I am doing my time over there.

Okay, if you want to bring me in court and go through this procedure, well, go through it, if I have to take the oath or whatever this legal technicalities are, fine, I will do it, all I want to be is not to be harassed when I go back to West Street.

THE COURT: I will see to that, I will mention this to Warden Gangler about the Lieutenant Coffee and to make sure that Coffee has little or no contact with you or anyone under Coffee's supervision.

MR. MC CORMACK: I mean I just don't want to be put in a box.

THE COURT: You won't be put in a box for this claimed offense, and what I'm talking about is a refusal to move when told to move.

MR. MC CORMACK: I don't talk to officers, when I speak I rspeak respectfully.

I want to state on the record that if this
Lieutenant Coffee does use any physical thing, I am
going to defend myself to the best of my ability.

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THE COURT: Well, as one Judge --

MR. MC CORMACK: I am not a tough guy, I am not --

THE COURT: As one Judge said to me when his grandson came home with a black eye, I asked him how he got it, he said, "I hit the other fellow first in self-defense --"

MR. MC CORMACK: Well, it may work out that way, I might not be in condition, but I am going to resist until I can't resist any further.

THE COURT: The international powers call it the defense of territorial integrity.

MR. MC CORMACK: I am agitated but --

THE COURT: Calm yourself, think about it,
I'm sure all your problems will be resolved, at least
through the --

MR. MC CORMACK: I have 15 years --

THE COURT: That I can't do anything about, as to the officer at West Street, we will see.

MR. MC CORMACK: All right.

THE COURT: All right.

Gentlemen, you will have to eat fast this afternoon.

Be back at 1:30.

(At 12:50 o'clock P.M. a recess was taken.)

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AFTERNOON SESSION (1:30 p.m.)

(The following occurred in the absence of the jury:)

THE COURT: Please be seated, gentlemen.

I have appointed Mr. Passalacqua for
Mr. McCormick and I advised him of your relationship
with Mr. McCormack. And, Mr. Chrein, you are at liberty
to consult with Mr. Passalacqua in the presence of
Mr. McCormack.

MR. CHREIN: In view of the circumstances, I would only do so on request, rather than there be any possible position that I am tampering with a government witness in a case that I am on trial on.

THE COURT: But we don't have the problem yet, I agree.

But there is another corollary problem that

I want to point out to you. You pointed out that
the government said they would call Mr. McCormack.

I don't think that's a grounds for a mistrial.

MR. CHREIN: It is not a questionof the government saying that they would call Mr. McCormack.

Mr. Weintraub at some length indicated precisely

what Mr. McCormack was going to say. Mr. Breen's name

was dropped on a number of occasions during that opening.

THE COURT: I get the full thrust of your argument. The point is this: again, I say, I do not think that its grounds for a mistrial because it is clear that this wasn't testimony. This is what he hoped to prove.

MR. CHREIN: But, your Honor --

many instances in which the government says they hope to prove something and they can't. Now normally the defendant has a perfect right to say that they said they were going to bring Mr. So-and-so and they didn't bring him.

Now was he an important witness? You take that into consideration.

MR. CHREIN: On the other hand, your Honor, it is very hard because the jurors --

THE COURT: I wanted to complete the thought.

MR. CHREIN: I am sorry, I didn't mean to interrupt you.

THE COURT: The corollary of the problem is whether you will comment to the jury that they failed to bringMr. McCormack after they said that.

Now in my humble opinion, they have forgotten about Mr. McCormack. They have forgotten what the government said they intended to prove, except in a broad outline. You can speculate they remember whatever Mr. Weintraub said, everything that Mr. Weintraub said. I will charge that it is out of the case. They don't have Mr. McCormack. And I want to know whether, having denied your motion, whether you are going to the jury, if Mr. McCormack doesn't testify, and say, they said they would bring Mr. McCormack. And why didn't they bringhim?

MR. CHREIN: Well, your Honor, I think that I do not have to fortify a claim by waiving a fallback argument to the jury, because when one's underpinnings are shot out, one hangs byone's hands.

THE COURT: If that is what you intend to do, and I have a perfect right to ask you whether you will comment on it, then I will permit the government to bring Mr. McCormick in and ask him questions, and then say, "Court's examination." There are two sides to that coin.

I think, having conceded that the government in good faith brought Mr. McCormack down --

MR. CHREIN: I would, your Honor --

THE COURT: -- that you must make a choice.

MR. CHREIN: Well, I would say this --

THE COURT: Excuse me. Let me expand on that.

I do not say you can't argue to the jury that the failure to bring enough evidence, or that they could have brought Mr. McCormack in. I am talking about a statement now that Mr. Weintraub saidhe would bring him in, and why didn't he bring him in when we all know he did bring him in, and he produced him to testify, at least as of this moment.

MR. CHREIN: Well, your Honor, I see the point that your Honor is driving at, but the fact still remains that the opening that Mr. Weintraub made was in somewhat greater deail possibly becauseof the long duration of this alleged conspiracy, but in any event, the opening that we heard in this case was then at somewhat greater length and in somewhat greater detail than we normally experience in trials in this Court.

But to a certain extent it is true Mr. Weintraub disclaims any intention to testify. It is true that Mr. Crohn and myself, I believe, advise the jury that this wasn't testimony. But the fact is that they heard it. The fact is, they cannot separate it. The

fact is, that the first time my client's name is mentioned in this courtroom, or any alleged acts attributed to him within the opening remarks in regard to the proposed testimony as to Mr. McCormack. It is true that because of the involved, complex nature of this conspiracy or of this alleged conspiracy, rather, that it is quite possible that the jurors might fill in from the opening subliminally -- and --

THE COURT: That only you and the psychologist can tell, because I can tell you this --

MR. CHREIN: On the other hand --

THE COURT: -- that except for the mention of Mr. McCormick, I have no recollection that his name was mentioned in the opening. I have no idea what his testimony is, and to this point, I don't know what his testimony is going to be.

MR. CHREIN: I had a strong recollection if only for the reason that my impression of the quality of the government's case --

THE COURT: All right, gentlemen, I get your point. Let's see what happens. You are preserving all points.

Is Mr. Chrein persisting, then you ask me for

permission to bring Mr. McCormick in and ask him questions before the jury --

MR. CHREIN: I just want to make one further point --

THE COURT: -- I think the jury should have a fair picture, and not such a distorted one --

MR. WEINTRAUB: Yes, your Honor.

MR. CHREIN: I would just want to make one further observation. I do not attribute in anyway any bad faith to the government in regard to their opening, as to their statement or the offer of the proposed testimony of Mr. McCormack.

On the other hand, Mr. McCormack's attitude in this court earlier today comes as no surprise, we did not have a session yesterday because the government was anticipating a question of immunity under Section 6003 of Title XVIII.

There was an immunity problem. So they had some fair warning before they opened.

THE COURT: That he would be a difficult witness.

MR. CHREIN: And possibly would refuse to
testify.

THE COURT: That is always a possibility. But I do not think that there was a certainty that in the

Q Do you recall any members of the District
Attorney's staff or the IAD saying what is your source of
supply? Do you recall that question being asked?

A It might have been, yes.

Q Did you agree to cooperate in catching police officers taking bribes but also cooperating so far as your knowledge of the narcotics trade was concerned?

A No.

Q You were not. Only for police officers; is that your testimony?

A My thing was I worked with IAD.

I never worked with Gablioni. He was Chief of Narcotics
in Queens. I never worked with him.

Do you recall saying to any law enforcement official -- let's talk about it this way -- prior to the late part of '72, do you recall telling any law enforcement official that Thomas Mattio was supplying you with heroin?

A His name had popped up.

Q Tell us where and when his name popped up and who you were talking to?

A It just popped up more or less like I think
it had something to do with Tyler Somas. They didn't go into
detail -- just his name idd pop up, though.

Q Did you learn that Mr. Mattio had been

Aguiar - cross/Krohn

shot in or about 1972 -- September?

- A Yes.
- Q How did you learn about that?
- A I received a telephone call.
- Q Did you read about it in the newspapers as well?
 - A Yes.
- Q Did you read in the news papers that Mr. Mattio had been found with five bullets in him and that there was a package of money -- a large sum of money found in the vicinity of Mr. Mattio?
 - A Yes, I read that.
- Q Did you then come with your lawyer and a member of the Police Department of New York City and ask to see a U. S. Attorney?
 - A Yes.
- Q How much time elapsed after you learned of the Mattio shooting, did you come to see a U. S. Attorney?
- A I believe it was the following day or a day after.
- Q If I told you that you previously testified at mother proceeding that it was three months later, would that refresh your recollection?
 - A No, it would not.

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1	7 Aguiar - cross/Krohn 243
2	Q Did you see Mr. Fitchie of the U. S. Attorney'
3	office in this building?
4	A Can I be clarified? I seen two U. S. Attorneys
5	Q Was Mr. Ritchie one of the U. S. Attorneys
6	that you saw?
7	A On the occasion of Mr. Mattio's shooting I seen
8	Mr. PUccio
9	Q Did you ultimately speak to Mr. Ritchie here
10	in this building?
11	A Yes.
12	Q Is it not a fact with your attorney you lay'
13	claim to the money found in the house where Mr. Mattio was
14	shot?
. 15	A Lay claim to?
16	Q Yes, did you tell the Government that that
17	was your money? You were making a claim for it?
18	A No, I acknowledged the part that was mine,
19	200
20	Q How much did you say was yours?
21	A \$250,000.
22	Q Is it not a fact that the very first time
23	you ever told any law enforcement official; city, state or
24	federal level that Mr. Mattio was your supplier, when you
25	came to this building to make a claim for that money?

THE COURT: May I have the question again,

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Mr. Shapiro?

(Record read.)

THE WITNESS: No.

Can you tell us when prior to that time you Q ever told any law enforcement official --

I believe the day after IAD came up to my apartment --

> Q Would you fix the time of that, please? THE COURT: If you can't fix the day --

A I believe --

THE COURT: -- try to fix it with respect to an event.

THE WITNESS: They informed me that Mattio was shot and I knew about it -- I read it in that morning's paper -- they always advised me that they were aware that he was my connection.

THE COURT: What did you say to that? THE WITNESS: I says well, I refused to give them any statement unless I speak to a U.S. --U. S. Attorney.

Q Isn't it a fact when you came to the U. S. Attorney's office and discussed the matter of the shooting that someone in the U. S. Attorney's office gave you advice about not going into Suffolk County -- do you recall that?

Aguiar - cross/Krohn

A I was advised not to go into Suffolk County.

Weren't you advised you should not go there because the police wanted to talk to you about the shooting of Mr. Nattio there?

A I was advised not to go there because -- in case of any -- you know -- occurrence of -- I didn't know who the third party was as far as --

Q With a third party --

A I knew Alex, I knew Mattio, Breen -- well,
Mattio and Breen had desolved their partnership --

MR. KROHN: I didn't ask that question.

MR. CHREIN: I would object to that.

THE COURT: Strike it out.

Try only to answer the question.

Q I will withdraw the question..

You were in the U. S. Attorney's office and advised not to go to Suffolk County because you might be questioned with respect to the Mattio shooting; is that correct?

A I believe they advised me of that and other reasons why not to.

- Q Do 'you recall who gave you that advice?
- A Offhand, no.
- Q Incidentally, Mr. Aguiar, can you estimate

warden and advise the warden that there have been threats. I told him, "The Judge is going to do that courtesy, I understand, so why do you want me to do it"?

THE COURT: All right, bring him in.

Now, Mr. McCormack, I signed an immunity order, which is the following:

"Ordered that James McCormack answer all questions directed to him during the aforesaid trial in the Eastern District of New York" -- and the trial refers to United States of America against Thomas Matteo and Frank Breen.

"It is further ordered that James McCormack shall not be excused from testifying or producing books, papers or other documents on the ground that the testimony may incriminate him or subject him to penalty or forfeiture.

"It is further ordered that no testimony or other information compelled under this order or any information directly or indirectly derived from such testimony or other information may be used against James McCormack in any criminal case except a prosecution for perjury for giving a false statement or otherwise failing to comply with this order."

Let the record show that the witness has turned

MR. McCORMACK: I haven't turned my back on the Court.

THE COURT: I want you to know that this protects
you against the use of any testimony given at this
trial. And I expect that you will answer any and all
questions put -- proper questions put to you by the
lawyers.

I further want to advise you that in addition to the possible penalty of six months for a criminal contempt of court you may be subject to the penalty arising from violation of probation.

MR. McCORMACK: That's no way possible, your Honor.

THE COURT: Well, do you understand what I'm saying?

MR. McCORMACK: No, I don't understand what you're saying. I want to get an attorney of my own choosing. You sent some kind of lawyer up here to see me, to try and coerce me and yell at me and scream at me, and didn't listen to a word I said.

Now I'd like a lawyer of my own. I think being that you brought me 500 miles down, I don't know what's going on, I tried to explain about this thing, nobody wants to hear it.

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THE COURT: Listen to me, Mr. Cormack, you are not setting the rule: in this court.

MR. McCOR MACK: No, but I'm here, and I didn't ask to be here.

THE COURT: You are going to answer the questions or be held in contempt of court.

MR. McCORMACK: Well, right now I want a lawyer and without a lawyer I'm not answering any questions. I --

THE COURT: Mr. James McCormack, will you take the oath?

MR. McCORMACK: I want a lawyer. Am I entitled to a lawyer?

THE COURT: I am directing you to take the oath.

MR. McCORMACK: Without a lawyer?

THE COURT: Yes.

MR. McCORMACK: Well, I have to speak to a lawyer or something, I'm sorry.

THE COURT: I'm directing you to take the oath. You are disrupting this trial, Mr. McCormack.

No, you don't have to turn to the defendants to ask for their advice.

> MR. McCORMACK: I am asking my ex-lawyer there. THE COURT: He's not your lawyer in this case.

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MR. McCORMACK: Well, who is my lawyer?

THE COURT: Mr. Passalacqua.

MR. McCORMACK: I don't know Mr. Passalacqua.

THE COURT: I appointed Mr. Passalacqua. I know him, and that's enough.

MR. McCORMACK: He's not representing my interests.

THE COURT: Well, you can decide to represent your own, but you are not delaying this trial,
Mr. McCormack.

MR. McCORMACK: I'm not trying to delay a trial.

I've down here since Friday. I'd like a phone call

and call my own lawyer.

THE COURT: The Clerk is directed to administer the oath.

THE CLERK: Raise your right hand.

MR. McCORMACK: I don't see why you are getting antagonized at me. I was here this afternoon and I explained everything.

THE COURT: Administer the oath.

THE CLERK: Mr. McCormack, will you raise your right hand, please.

THE COURT: Please rise and repeat the oath after the Clerk.

(Continued on next page.)

JAMES McCORMACK, called as a witness, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

THE WITNESS: Yes, and I'd also like an attorney.

THE CLERK: All right, be seated, please.

THE WITNESS: What's this lawyer you assigned to me?

THE COURT: Mr. Passalacqua, would you please take a seat over there.

THE WITNESS: Yes, he doesn't represent me.

I don't know who he is.

THE COURT: Well, you don't have to take his advice. He'll be available --

THE WITNESS: He didn't give me any advice.

THE COURT: Will you sit there, Mr. Passalacqua.

Will you ask the questions, Mr. Weintraub.

Now first let the record show, as you indicated, that this witness testified before the Grand Jury.

MR. WEINTRAUB: That's correct.

THE COURT: Is that correct? All right.

Now, it's my understanding that you have no objection to waiving the privilege between yourself and Mr. Chrein, that whatever conversations --

THE WITNESS: I have an objection to waiving that also, yes. Mr. Chrein was my attorney. Anything

McCormack-direct

I say may jeopardize whatever is happening here.

Mr. Chrein represented me, he knows my whole background. He represented me on two bank robberies and
he also was familiar with an attempted murder, and
if there is -- if I can take that privilege, I'd take
that also.

(Continued on next page.)

McCormack - direct

THE CLERK: Grand cury minutes --

THE COURT: Well, I won't proceed. I understood Mr. McCormack was ready to waive that privilege.

THE WITNESS: I didn't say -- I didn't say that.

THE COURT: Give Mr. McCormack the opportunity
to call a lawyer. He'll be called back tomorrow. But
I will do a lit le research on my own, because I don't
want to affect the rights of this defendant. But when
I am fully sure of what penalties may be imposed against
Mr. McCormack, I'll bring him back.

THE WITNESS: Also, your Honor --

THE COURT: You are excused. You are excused.

THE WITNESS: While I'm under Oath, I'd like to say --

THE COURT: I called the Warden.

THE WITNESS: Yes, that's what I want to talk about.

THE COURT: And I told him what your complaint was, and they'll look into it.

Now you are excused.

THE WITNESS: Okay.

(Witness excused.)

THE CLERK: Grand Jury minutes of James McCormack, marked Government's Exhibit 25 for identification.

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he had been told by the Court that the Court had called the Warden.

THE COURT: Go ahead.

MR. McCORMACK: Is it all right if I remove my jacket?

THE COURT: No, it's not all right.

Do you want to show some bruises?

MR. McCORMACK: Yes.

THE COURT: Oh, sure. Remove your jacket.

MR. McCORMACK: This is --

THE COURT: I see some scratches on the left shoulder.

MR. McCORMACK: Scratches.

THE COURT: Scratches on the back.

MR. McCORMACK: Yes. I was attacked by six deputies.

THE COURT: Six deputies?

A MARSHALL: Not deputies, but correction officers.

MR. Mccormack: Six hacks over there.

THE COURT: "Six hacks over there"?

MR. McCORMACK: Yes.

THE COURT: You say they did that?

MR. McCORMACK: I have the reports in my pocket and I have plenty of statements from witnesses.

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THE COURT: All right.

MR. McCORMACK: That was after I told you I was going to be placed in segregation for refusing to testify.

THE COURT: All right. Now, that's all on the record.

I see a scratch on your right shoulder, a scratch on your left shoulder, a scratch over the --

MR. McCORMACK: You don't see the kicks in the stomach. I haven't seen a doctor. You don't see the kicks in the stomach.

THE COURT: I do not see that.

MR. McCORMACK. No. They don't leave any marks.
They got a pretty good way of doing it.

Scratches on the back. Two scratches over the right side of the back.

All right. Now you can put your shirt on.

MR. MCCORMACK: Also --

THE COURT: You made a record that you have the scratches and someday you may be able to prove that the guards did it, but that is not why you are here and you are not going to take all my time to tell me about your complaints. You are --

MR. McCORMACK: I am looking for the protection

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22 EXAMINATION

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23 BY MR. WEINTRAUB:

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Your name is James McCormack? Λ That's right.

from the Court.

THE COURT: Now wait. You are here to testify and you were writted down here to testify and I want to know whether you are ready to take the oath?

MR. MCCORMACK: Yes, I am ready to take an oath, but hold it. I am looking for protection from the Court

THE COURT: Administer the oath.

MR. MCCORMACK: What do I do?

THE COURT: Administer it again.

MR. McCORMACK: I haven't seen a doctor or anything.

MR. PASSALACOUA: After you get off the stand, then we'll ask the Court for some sort of protection. The Court will advise you.

> THE COURT: Administer the oath to the witness. MR. PASSALACQUA: One thing at a time.

JAMES MC CORMACK, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

> THE COURT: Mr. Weintraub, put your questions to the witness.

McCormack

1		Q	Do you know a man named Thomas Mattio?
, 2		A	I know him.
3		O	Is he in the Court?
4		A	I think that's (indicating) him, yes.
5		Q	Which one? Which man?
6		Α	Sitting at the end.
7		0	Which end?
8		Α	Right there; Thomas.
9			MR. KROHN: I'll stipulate.
10			THE COURT: Which end?
11			THE WITNESS: At the end of the table.
12			THE COURT: What is he dressed in?
13			THE WITNESS: Dressed in a suit.
14			THE COURT: Will you stand, Mr. Mattio?
15			Is that the individual you pointed out?
16			THE WITNESS: That's the guy I know, yes.
17			THE COURT: All right. Let the record show the
18		witnes	s pointed out the defendant Thomas Mattio.
19	BY MR.	WEINTR	AUB:
20		Q	How long have you known Thomas Mattio?
21		A	I can't recall off-hand.
22		Q	Well, would it be years?
23		A	I have been in prison for sixteen years, sir.
24	I can'	t recal	1 off-hand.
25		0	Did you do you recall back in 1968. during

	one oping,	that you had a parote violation? Do you remember
2	that?	
3	А	Vaguely I remember, yes.
4	Q	You went back in for sixty-two days, for viola-
5	tion of your	parole?
6	A	I couldn't tell you how long I went in but, yes,
7	there was a v	riolation sometime in '67 or '68.
8	Q	And just before you got violated, what was the
9	reason you go	t violated? Do you remember that?
10	A	The reason I got violated?
11	0	Yes.
12	A	One, for living with a woman that wasn't my wife
13	and one for b	eing out of work or something like that.
14	Q	You didn't notify them that you were out of
15	work; right?	
16	- А	Something like that, yes.
17	Q	And you didn't notify them that you had a car:
18	right?	
19	A	I don't remember that.
20	o	What kind of car did you have back then?
21	A	I don't remember that either.
22	0	Did you have a car?
23	A	I don't remember if I had a car.
24		Can I make a statement while I'm under oath?
25		THE COURT: No. Just answer questions.

THE WITNESS: Oh, okay.

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Okay.	What	were	you	doing	for	a	living	just

0 before you were violated in the Spring of '68?

> Just before? I was working in Drake's Bakery. THE COURT: Will you please put questions that directly bear on this conspiracy, to find out whether the witness will or will not answer?

MR. WEINTRAUB: Mark this, please, did you mark that already?

THE CLERK: Yes. It's marked. It's Government Exhibit 25.

MR. WEINTRAUB: Just a moment, your Honor.

THE COURT: Let the record show that the witness is consulting with Mr. Passalacqua.

BY MR. WEINTRAUB:

- O In October of 1971, did you have a meeting with the defendant Thomas Mattio at a place called the Pow Wow Lounge on Lexington Avenue in Manhattan? You met him there; didn't you? Do you remember that?
 - Are you telling me I met him there?
 - 0 I'm asking you.
 - A At the moment I can't recall.
- And at that meeting, didn't Mr. Mattio ask you if you wanted to get into dealing drugs for him, make some money?

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also have to explain that for the past eight months, I've been in intensive psychotherapy at the Adirondacks Correctional Treatment Center. There are five doctors that will come down and tell you, I've been undergoing intensive psychotherapy for six days a week for eight months. They've been giving me chemicals. They've been working on my mind and everything now.

What you are asking me to remember here is four, five years ago, or seven years ago.

- Q Do you remember?
- A I don't --
- Q Did that happen?
- A Did I what? Did he offer that?
- Q Did he offer that?
- A I don't recall.
- I'm going to show you Government's Exhibit 25 at page three. I'd like you to read from the top of the page to line seventeen and I ask you if -- well, just read that for now.
 - A Yes. When was this exhibit taken?
 - Q The date is on the front.
- A In the Grand Jury minutes? Yes. At the time they brought me here also I was under heavy sedation. Dr. Pyers of Kew GArdens will testify to that.

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Q	MONTO	you	read	the	page,	please?

- This sounds familiar but whoever was taking this down was asking me the questions. I wasn't making the statements.
 - 0 right.
 - ves.
 - But do you remember those questions being
 - 1 . I don't remember all of them, no.
 - Did you appear in that Grand Jury?
 - Yes. I remember appearing in the Grand Jury. A
- hoes that refresh your recollection now as to 0 what happened in October of 1969?
 - Mo, it doesn't refresh my recollection.
- no you remember the question, "A week later did you meet with Mattio at the Pow Mow?"
 - This is line eight and line nine of page three.
 - "Answer: Approximately a week later."
 - To you remember that question?
- You're asking me to remember questions from a few years ago and I've told you what I've undergone in the past few years, and at the time of that Grand Jury I was drugged. I was taken from Kew Gardens, Dr. Pyers, the psychiatrist, druge me.
 - O Is that an accurate description of the question

and answer that you gave? Do you recall?

A I'm trying to answer you, sir, and I'm trying to explain to you the state of mind that I was in and the state of mind I'm in right now. I haven't received any medication today. I haven't seen a doctor. I slept on the floor last night.

MR. WEINTRAUB: Your Honor, I ask that the answer be stricken as unresponsive.

THE COURT: No. It is unresponsive but it is quite revealing.

The only question is, do you remember that question being asked in the Grand Jury?

THE WITNESS: No, I don't.

- Q Had you spoken to any law enforcement officials before you appeared in this Grand Jury?
 - A I spoke to several, yes.
- Q Did they contact you originally or did you contact them?
 - A They contacted me.
 - Q They contacted you?
- A Yes. I read in the paper Mr. Mattio was shot and I called the hospital, to see what his condition was. They contacted me after that.
 - Q And didyou cooperate with them?
 - A In what manner?

	Q	Did	you	tell	them	what	you	were	doing	with
Mr.	Mattio?									

A I told them I wanted to know what happened to Mr. Mattio and if there was anything I could do to help him because he was shot in the back five times, I would.

- Q You're a friend of Mr. Mattio's for a long time?
- A My brother is godfather to his children. I'm not a friend of his for a long time. I only know him for a short time.
 - Q Do you know a man named John?
 - A But I don't like anybody being shot in the back.
 - Q Do you know John Indiviglia?
 - A I think I worked in a supermarket for him.
 - Q Did you have any other dealings with Mr.

Indiviglia?

- A Offhand I don't know. Maybe socially, I don't know. You're going back to when now?
- Q I'll give you a specific date in a minute. In February of 1968, did you meet John Indiviglia?

A At this time, I don't recall, and again I'm going to repeat that I'm sick and I haven't received any medication and I'm very confused.

THE COURT: I don't think we have to continue with this fruitless search. I just find that this witness is willfully failing and refusing to answer

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questions.

THE WITNESS: No, I'm not refusing to answer questions.

THE COURT: That is my determination, not yours.

THE WITNESS: Oh, okay.

THE COURT: You just do not remember, and it is because of your condition. I do not believe it.

I do not know what I am going to do about it. I do not know whether I will hold him in contempt of Court.

MR. WEINTRAUB: May I ask one additional question, your Honor?

THE COURT: Sure.

BY MR. WEINTRAUB:

0 Did I speak to you yesterday?

Briefly, yes.

About five minutes?

Yes.

Was your attorney at that time, Mr. Passalacqua,

with you? And I?

> A Yes.

And do you recall that you told me at that time that when you originally were cooperating, the agents that you were talking with were evidently pretty smart fellows,

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some	psycholog

evidently had some psychology?

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- A I said that they had --
- Q Some knowledge of psychology?
 - A Courses in public relations.
 - Q Public relations. That's the term you used.

You said that they pointed out to you that you had been the fall guy, that you had been going to jail all of that time for sticking up banks and making maybe \$2,000?

- A Is that what you said to me?
- Q No. This is what you said to me. Is this what you said to me? And that the other guys --
 - A I don't remember.
- O That the rest of them were making big money?

 Do you remember saying that to me?
 - A No, I don't. Do you?

MR. PASSALACQUA: I'm not privileged to answer any questions. Give him your recollection.

- A (Continuing) No, I don't remember saying everything you're saying now.
- O Do you remember saying to me that if you chose to, you could get on this stand and you could prove that Mr. Mattic didn't have anything to do with Aguiar? Do you remember saying that?
 - A With Aguiar?

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McCormack

Yes.

A Oh, yes, I can prove that.

Q How can you prove that?

THE COURT: Well, objection sustained. I won't permit this examination to wonder all over the field. It is just a waste of time.

No question in my mind that this witness has committed a contempt of Court.

I defer any sentence until after I hear the whole case and see that -- and understand that -- the consequences of his failure and refusal to testify.

This witness is excused. You might keep him at West Street until tomorrow.

I expect that he will be returned to the institution from whence he came probably sometime after tomorrow. I do not want --

A MARSHALL: He'll be held, your Honor, until the writ is satisfied.

THE COURT: I think hold him until tomorrow. You are excused, Mr. McCormack.

A MARSHALL: Okay.

THE WITNESS: Your Honor, do I return now to this bare cell that I'm in, without any medical treatment?

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THE COURT: I do not make any determination on your statement. I find that your statements are absolutely worthless. I do not believe a thing you say.

I do not say that you have not been assaulted and I do not say that you did not sleep on the floor.

I would say that in the absence of any other testimony about the conditions, I would not take your statements at face value.

THE WITNESS: Well, there are witnesses.

THE COURT: Your behavior before me indicates that you have no more regard for the truth than you have for a fly on the wall.

THE WITNESS: No, you're mistaken. I'm willing to sit up here and tell the truth.

THE COURT: No. You've had your opportunity, Mr. McCormack.

THE WITNESS: No, no.

THE COURT: You may --

THE WITNESS: I'm talking about medical treatment.

THE COURT: I know. It is available at West Street.

THE WITNESS: I haven't slept. It's available?
They ---

THE COURT: I know.

THE WITNESS: Deputy Fox is downstairs willing

to come up. They refused to let me see a doctor.

THE COURT: I will not listen to any complaints about West Street. I have no petition by you. If you file a petition -- incidentally that's in the Southern District, so you may want to file it in the Southern District and let somebody consider it there. But I have no jurisdiction under your claims.

THE WITNESS: Is this man still my attorney?

THE COURT: He is your attorney for the purpose of advising you of your rights in this lawsuit. I do not appoint him to prosecute any claims you have.

You make that application to a Judge in the Southern District.

THE WITNESS: I don't know anything about applications. I know I want to press charges against these officers that assaulted me.

THE COURT: You are free to do it. You go right ahead. I am not here to listen to that.

MR. KROHN: If the Court pleases, if your Honor has made a determination that the witness McCormack is not going to be called in this matter, just for the record, in order to preserve the claim, I am renewing

my request for a mistrial.

THE COURT: Of course that is denied on the ground that you stated, but there are interesting variations and possibilities of modification of my order here and I am trying to keep them all in mind.

One of them is if indeed Mr. Breen is not subject to a violation under Section 846, and if I interpret the charge as being that, then your representation of Mr. McCormack, which is the big stumbling block here, is removed, and then I would permit the government to examine Mr. McCormack in the manner in which Mr. Weintraub examined him, with relation to the testimony he gave at the Grand Jury, and then let him tell the Jury that he doesn't remember and let them consider whether he does or does not.

MR. WEINTRAUB: Your Honor --

THE COURT: Then it will only be against Mr. Mattio.

MR. WEINTRAUB: At this time the government would request an adjournment of the trial for appointing different counsel for Mr. Breen, because without --

THE COURT: Do you know what that means? I then declare a mistrial and start all over. That would be much easier.

rankly -- and I do not like to measure the value of testimony offered by a witness, but in the entire context of this case, and on testimony that I have heard, Mr. McCormack's testimony is less than worthless, and why you would press for a mistrial and take up the time of this Court is beyond me.

He is either feigning some kind of emotional instability or actually is somewhat disturbed.

Now, I personally -- I have some suggestion that he is just a plain faker. He knows when he wants to work out a deal. He's so anxious to get out of the institution he's in, that he'll testify against Mr. Mattio, at least that was the indication, if he were guaranteed he'd get out. But he wants that guarantee.

Now, he seeks some kind of approval or acknowledgement that a deal was made to that effect and he
is thinking of Santabello, you see. He's got that in
mind. He does not understand that that involved a
guilty plea, but he's got some feeling that he might
be able to enforce that.

That is number one in Mr. McCormack's mind.

Nothing else is number two.

Now getting whatever he said before the Jury

about the meetings ha had with Mr. Mattio might be of value but --

MR. WEINTRAUB: Mr. Breen would eliminate the problem, as far as — I mean, Mr. McCormack would eliminate the problem, the 846 problem, as far as Mr. Breen is concerned, because he places Mr. Breen or his Grand Jury testimony does, in the conspiracy, subsequent to May 1, 1971. And that's the reason the Government was pressing the introduction of his testimony through the Grand Jury or otherwise, knowing the shortcomings of Mr. McCormack.

MR. CHREIN: Well, I would have to, of course, object to any introduction of his testimony because that testimony is not subject to cross-examination. It was not conducted in an adversary setting. He was asked questions by a friendly interrogator, at that time friendly interrogator, without any critical attack on the answers he's given.

THE COURT: What puzzles me is the lack of interest in both sides of Mr. McCormack being a possible witness. First he was named as a co-conspirator, unindicted, and I do not know whether Mr. Chrein recognized that this was his former client at the time of the indictment.

MR. CHREIN: I did not, your Honor.

I think I should make a statement. When we received -- when we -- initially Mr. Krohn represented both Mr. Breen and Mr. Mattio. This matter was called before -- I don't recall what Judge. Mr. Gutmann, who I believe is in the courtroom, was present at the time we were assigned. We were assigned this case and Mr. Gutmann has indicated to me both before and after I appeared before you yesterday that he did inquire as to -- of Mr. Richie as to whether we had any former connection with any of the Government witnesses. Mr. Richie had indicated "No".

The name Mattio had struck me as a familiar name and I searched my files and I found that we did represent one by the name of Mattio, but not the same Mattio who is co-defendant in this case.

Frankly, I must have represented thousands of defendants in my tenure over here and the name James McCormack is not an unusual name and I didn't recognize it by name because I did not deal with McCormack in any narcotics conspiracy. I dealt with him with regard to bank robberies.

It was only when I saw Mr. McCormack's face in this courtroom yesterday that I recognized him. For that reason, I had no way of anticipating the problem,

until I saw Mr. McCormack brought out of the detention cell yesterday.

THE COURT: I am convinced in my own mind that to permit the testimony to come in and limiting the cross-examination to some undisclosed areas and barring certain undisclosed areas and Mr. Chrein is the only one that really knows what he may not examine on, would be a violation of the defendant's right to due process.

To disrupt this trial by bringing in another attorney at this point is just unthinkable. It might mean weeks.

There is a third solution, and if the defendant Breen moves for a mistrial and the government consents, I'll do it and sever, and then I'll hear any argument by Mr. Krohn as to what to say to the remaining defendant, and give Mr. Breen the opportunity to get another lawyer or I'll appoint another lawyer, because I do not suppose anyone at the Legal Aid Society is at liberty to handle it then.

MR. CHREIN: I would say that's the case, your Honor, especially since I'm the supervising attorney in the office.

THE COURT: That means a long adjournment.

McCormack

MR. CHREIN: Your Honor, can I have five minutes just to discuss this facet of the problem with Mr. Breen?

THE COURT: Now, of course, the solution would have been, if Mr. McCormack waived his right against self-incrimination -- I mean, the privilege.

MR. WEINTRAUB: The privilege.

of minimal value, but I will not permit the waiver unless I am assured that he understands it. He has made so many contradictory statements on the record, and probably for the purpose of proving that he did not know what he was saying, that I would be reluctant to take any waiver, except if it was clear in my mind that it was clear in his mind as to what he was doing.

That sounds like a formidable task.

MR. CHREIN: Your Honor, might I have two minutes just to discuss the possible implications of this discussion with my client?

THE COURT: All right.

(Recess taken.)

(The following occurred in the absence of the Jury:)

MR. CHREIN: Your Honor, I again move for a

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declaration of a mistrial in the matter as against the defendant Breen. I have consulted --

THE COURT: You understand that no double jeopardy --

MR. CHREIM: I am moving for the mistrial.

I am fully aware of that consequence.

THE COURT: I will listen to you after I see
whether the Government will consent. I do not know
whether I will do it without the Government's consent.
There are problems involved here.

It certainly is preferable to disrupting the trial and adjourning it for a few weeks.

MR. WEINTRAUB: I'm going to consent.

THE COURT: All right. What objection can you have?

MR. KROHN: My objection basically was one that was set forth yesterday, your Honor, depending on whether or not Mr. McCormack testified. If he didn't, then I feel that the opening statement by the U.S. Attorney was prejudicial, in that Mr. McCormack's name was throughout this opening remark. Mr. McCormack did this, he did that, he introduced so and so to so and so.

Mr. McCormack was placed at many different places

apartments, cocktail lounges, and if Mr. McCormack didn't appear, then I think that the U. S. Attorney's bringing him into the picture would be prejudicial to my client.

THE COURT: Do you question the good faith of the United States Attorney in making that statement in his opening before the Jury?

MR. KROHN: Never did, your Honor. Yesterday I said I didn't question his good faith, nor do I now.

THE COURT: The motion for mistrial in behalf of Mattio is denied.

On the consent of the United States Attorney, the motion for mistrial against defendant Frank Breen is granted.

MR. KROHN: Now I have another obligation.

THE COURT: And severed.

MR. KROHN: Now --

THE COURT: I will still hear testimony about any threats made to any Government witness, if they're attributable to Mr. Breen.

MR. CHREIN: May I be present during those threats?

THE COURT: You certainly will be, and Mr. Breen will have full opportunity. But you just warn Mr. Breen that --

MR. CHREIN: I've already discussed this with Mr. Breen. If I might indicate the answer I've received? I don't think it's the sort that he would not want me to make.

He indicated that he has had no contact with Mr. Somas, nobody at his direction, instigation or hint has had any contact with Mr. Somas.

He attributes Mr. Somas' statement on this part is -- and I'll quote him -- is that he feels that if Mr. Somas were to come to this courtroom and perjure himself and improperly implicate Mr. Breen, that he would rather have Mr. Breen in custody immediately thereafter and he attributes this entirely to the mental processes of Mr. Somas and not to any act that he himself has undertaken.

THE COURT: All right. Do you have the police officer who is ready to testify as to what he heard?

MR. WEINTRAUB: Police officer? No sir. I said he contacted his attorney, who contacted me.

My office is attempting to contact Mr. McLoughlin who is on the Island, and ask him to be in this Court today.

THE COURT: All right. Is the police officer who spoke with Mr. -- you say his name is Mr. McLoughlin?

MR. WEINTRAUB: Mr. McLoughlin is the attorney for Mr. Somas.

THE COURT: That's right. And he spoke to a police officer?

MR. WEINTRAUB: No. He spoke to me.

THE COURT: To you? What did Mr. McLoughlin tell you?

MR. WEINTRAUB: Mr. McLoughlin told me that Mr. Somas was in fear, that the reason he was unavailable was that the defendants, is the term he used, told him what would happen to him if he testified.

I did not go into it further at that point.

There was a very rushed discussion this morning on the phone before coming up to Court.

THE COURT: Well, that is too general, of course, but I will hear testimony.

MR. WEINTRAUB: Yes sir.

THE COURT: Incidentally, if you ultimately are successful in bringing Mr. Somas -- how do you spell that?

MR. WEINTRAUB: S-o-m-a-s.

THE COURT: Mr. Somas into the courtroom to testify, I will hear testimony outside the hearing of the Jury as to exactly what did happen.

MR. WEINTRAUB: I think the Jury would be entitled to hear it.

THE COURT: That's another question. If there is proof that the threats are attributable or the Jury may reasonably infer that they are attributable to the defendant, of course I will allow it.

MR. WEINTRAUB: Yes.

THE COURT: United States against West, and Mr. Chrein recognizes, one of your clients.

MR. CHREIN: Yes. I seem to have many clients.

THE COURT: Oh, yes. I recognize that.

MR. KROHN: If your Honor please, I have another application now.

In view of the fact that your Honor has granted the severance, I now renew my application for a mistrial on behalf of the defendant Mattio, on the following grounds. The Jury has been present for this will be the fourth -- the fourth day. Monday -- the third day. They have seen Mr. Mattio and Mr. Breen seated at counsel table together, have heard testimony. If they were now to come out and find Mr. Breen is gone, Mr. Mattio is sitting there alone, they would come to an inescapable conclusion, and no learned explanation by the Court could cure the conclusion that they would

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come to.

THE COURT: Well, learned or not, I would ask you to tell me what explanation you would like to give to the Jury.

MR. KROHN: I could never in a million years explain to them why Mr. Breen was now gone and Mr. Mattio was sitting there. Their inescapable conclusion was that somebody found out that he is not guilty and he's going and this fellow has to stand trial.

THE COURT: I am not going to tell them that. I wouldn't.

MR. KROHN: This is the conclusion they will come to, your Honor. If Mr. Breen leaves and Mr. Mattio remains, is inescapable in the Jury's mind that this is commensurate with guilt.

THE COURT: I will tell you what I intend to tell them and I will say it word for word and I will ask you for any other suggestions that might minimize what you believe to be the prejudice.

I am going to say that on the motion of the defendant Breen, with the consent of the Government, the charge against him was severed and is pending. That will remove any implication that there was any distinction between Mr. Breen and Mr. Mattio.

I will further say that they are not to make any inferences of any kind adverse to Mr. Mattio because of this ruling, which was a ruling as a matter of law based on that consent.

In the light of that ruling I am going to ask that Mr. McCormack be dispatched as soon as possible to the institution from whence he came.

Have you got the stamp?

MR. WEINTRAUB: Your Honor, it would be the Government's intention to still put Mr. McCormack on the stand.

THE COURT: Of course I will allow it. Will he be your next witness?

MR. WEINTRAUB: He will be the next witness.

THE COURT: I will put that down "from whence he came" so I do not forget to sign it.

MR. KROHN: I would like the record to note my objection to your Honor's ruling about the severance.

THE COURT: Yes.

Would you like Mr. Breen to leave the courtroom before the Jury comes in or after? Any formality I leave with the defendant's counsel.

MR. KROHN: I have no feeling.

THE COURT: Now the choice is yours.

MR. KROHN: I object to the entire proceeding.

In my own view of the matter is that Mr. Breen might have an interest in the testimony as it transpires in this courtroom.

THE COURT: Then you will take a seat in the front row.

MR. KROHN: That is if he wants to stay he should be permitted to stay. If he wants to go, he should be permitted to go.

THE COURT: I do not want him at counsel table after I make the announcement to the Jury.

MR. CHREIN: I will go to my office and if there are any -- anything about threats, please inform me and I will come back.

THE COURT: Surely.

Do you intend to call Mr. McCormack now?

MR. WEINTRAUB: Yes.

THE COURT: Seat the Jury.

MR. KROHN: I have been advised that there are two police officers from Suffolk County present in the courtroom.

Initially before the trial began I asked for the exclusion of witnesses. I waived that request with respect to the officers and consented that they could be present during Mr. McCormack's testimony.

MR. CHREIN: Until and unless I am relieved -- I anticipate that I will be relieved of my assignment to represent Mr. Breen for the second trial of this matter.

Until and unless I am relieved, should anybody

-- I am also referring to counsel -- should decide to
summon Mr. Breen as a witness, can I be available to
assist Mr. Breen in whatever rights he wishes to avail
himself of?

What I am anticipating --

THE COURT: You mean during any hearing until someone else is appointed?

MR. CHREIN: During the further course of this action, the co-defendant -- if he chooses -- to have Mr. Breen take the stand as a witness in his behalf, and since these charges are still open and pending I would submit that Mr. Breen is entitled to the presence and advise of counsel --

THE COURT: If I substitute counsel, you won't be expected to be here.

MR. CHREIN: As soon as you substitute counsel
I will consider myself a free agent.

THE COURT: However, I direct that you continue

to represent Mr. Breen until such time counsel is substituted for you.

MR. CHREIN: The only reason I am raising this point now, I want it clear that if Mr. Breen is called as a witness -- before the substitution is made -- that I would like to be called back into this courtroom so I could assist him.

(Continued on next page.)

McCormack - direct

THE COURT: You certainly will.
Seat the Jury.

THE COURT: I would like to advise the Jury, in your absence on the motion of the defendant Frank Breen, and with the consent of the U.S. attorney the proceeding against the defendant Breen was severed and that charge against him is pending.

The trial will continue against the defendant Thomas Mattio.

Now, that determination was made as a matter of law and based on the motion made by the defendant Breen and with the consent of the U. S. attorney, so you may draw no adverse inferences against the defendant Mattio by reason of that ruling or as a matter of fact by reason of any ruling the Court makes.

I make my rulings as a matter of law so don't attach any significance whatever to the fact the proceeding was severed against Breen and continued against the defendant Mattio.

Mr. Weintraub, would you call your next witness.

MR. WEINTRAUB: The Government calls James

McCormack.

THE COURT: Would the clerk please swear the witness.

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CORMACK, called as a witness,

having been first duly sworn by the Clerk of the Court, testified as follows:

THE CLERK: State your full name, please.

THE WITNESS: James McCormack.

DIRECT EXAMINATION

BY MR. WEINTRAUB:

- Q Mr. McCormack, how old are you?
- A 38, sir.
- Q Where do you presently live?
- A Clinton Prison, Dannemora.
- Where you in prison for? Q
- I'm not sure whether it's a bank robbery or an attempted murder.
 - When were you convicted of that?
 - I was convicted of bank robbery July 15th.
- I am not sure of the date -- it was in 1972. I was convicted of the attempted murder in the same year.
 - How much time do you have to serve? Q
 - A 15 years.
 - Do you know an individual named Thomas Mattio? Q
- A Yes, I do. 23
 - Do you see him in Court?
- Yes. 25

		A SO
1	3	idcCormack - direct
2	u	Point him out.
3	A	Over there.
4		MR. KROHII: I will stipulate identification,
5	your H	onor.
6	2	how long have you known Thomas Mattio?
7	A	I can't say offhand. I know him through the
8	family. When	I came home from pirson, I know him he knows
9	my family.	
10	Q	Do you know him for a number of years?
11	Α	The total amount of time I know him is approxi-
12	mately six mo	nths.
13	ú	Six months?
15	Α	I have been away in prison.
16		well, what I mean, when did you first meet him,
17		o or a number of years ago?
18	A	A few years ago.
19		Did you know Mr. Mattio in 1967, do you recall?
20	A that time 100	I am not sure if it was 1967. It was around
21	that time, 19	
22	a place called	Did you ever have a meeting with Mr. Mattio at
23	A	I don't remember the Mardi Gras.
24	. 0	Were you ever involved in selling narcotics,
5	Mr. McCormack	

- A was I ever involved?
- Q Yes.

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- A I was convicted of selling narcotics -- not selling narcotics -- possession narcotics in 1950 -- early fifties. I was a drug addict.
 - Q How long were you a drug addict?
 - A When did I first start using drugs?
 - Q Yes.
 - A In about '51.
 - Q When did you stop, if ever?
- A Out of those years I spent 15 years and eight months in prison.
 - Q You weren't using drugs in prison?
- A No, I wasn't using drugs in prison. I was under a doctor's care being administered drugs.
 - Q In 1967 were you still a heroin addict?
- A I came home from prison in 1967. I wasn't a heroin addict.
 - When did you come home from prison in 1967?
 - A I am not sure of the date. It was the fall.
 - Q In the fall?
 - A In the fall of 1967.
- Q Did you get a call from Mr. Mattio right after you came home from prison?

A	Dia	I	yet		call?	I	didn't	have		phone,	no.	
---	-----	---	-----	--	-------	---	--------	------	--	--------	-----	--

- Q Did you see him?
- A I met him.
- Q was anyone else present?
- A I don't recall that at all.
- Was Frank Breen present when you met with

Mr. Mattio?

- A I don't think so.
- What did you discuss with Mr. Mattio at that meeting?
- A Mr. Mattio was -- I don't know if I'm allowed to say this.

THE COURT: The Jury may be excused.

(Jury excused.)

THE WITNESS: Your Honor, can I --

THE COURT: Don't say anything before the Jury.

THE WITNESS: I want to speak to my attorney.

THE COURT: You may speak to your attorney.

Mr. Passalacqua, would you consult with

Mr. McCormack?

Mr. Krohn, my suggestion is that Mr. Weintraub put leading questions calling for only a yes or no answer because any narration by this witness might very well prejudice the rights of the defendant.

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MR. WEINTRAUB: Yes, your Honor.

THE COURT: I will instruct him to say yes or no, or if he can't, just say he cannot answer yes or no.

MR. CHREIN: Also I would hope that he'd heed your Honor's admonition to stay away from any jail term --

THE COURT: I suspected that is what he is going to testify to.

Mr. McCormack, I want to say this very strongly and I will try to say it clearly.

I have instructed Mr. Weintraub to put questions to you that require a yes or no answer. If you can't answer it yes or no, say you can't answer it yes or no. If you don't remember, just say you don't remember.

THE WITNESS: Yes, sir.

THE COURT: 'If you have a slight recollection, you might say, "I have some recollection."

I don't want you in any manner to refer to any imprisonment of Mr. Mattie or any conviction.

THE WITHESS: That's why --

(Continued on next page.)

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DIRECT EXAMINATION

BY MR. WEINTRAUB: (Cont.

THE COURT: That's why I excused the jury.

Nothing that might hurt Mr. Mattio about prior record

should come out before this jury.

THE WITNESS: That's why I asked.

THE COURT: That was a good time.

Mr. Weintraub only yes or no questions and the witness understands it fully.

THE WITNESS: Yes, sir.

Your Honor, I am not trying to be a wise guy but I just like -- I am asking the attorney now -- I haven't had any sleep all night. I can hardly think clearly.

THE COURT: Do the best you can.

When Mr. Krohn has his chance for crossexamination he will bring that before the jury that
you haven't had any sleep that you are under psychiatric
care --

THE WITNESS: I have been beat up, too.

THE COURT: He will bring that out always.

MR. PASSALACQUA: I am advising him he has complete immunity --

THE COURT: No one can use this testimony in

That's the kind of immunity you have.

any prosecution. They can't use any testimony that

might indirectly or directly flow from this. They

THE WITNESS: What I am trying to impress upon the Court, I don't want a contempt charge --

THE COURT: I will deal with that at another time.

THE WITNESS: It may seem that way --

THE COURT: I have already held you in contempt of Court.

THE WITNESS: It may seem that way because of the state of mind I am in now.

THE COURT: I have taken all that into consideration. I felt that the questions put to you outside of the hearing of the jury -- your failure to answer, your evasiveness was in contempt of Court and I have so held that already.

THE WITNESS: I have to respect your holding but it's not evasive, it's confusion. I haven't see a doctor.

THE COURT: I will take that up later. Seat the jary.

THE WITNESS: What do I do?

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McCormack - direct

MR. FASSALACQUA: Answer the questions as best you can.

THE WITNESS: I can't hardly remember what happened yesterday.

MR. PASSALACQUA: Do the best you can.

You answer the questions.

THE WITNESS: I have no sleep --

THE COURT: I don't know whether you intend to have this conversation heard by me. If you want to consult with Mr. Passalacqua, you may step down.

THE CLERK: Two-page report dated October 20,
1972, marked Government's Exhibit 28 for identification

Four-page statement dated December 15, 1972 marked Government's Exhibit 29 for identification .

A one-page report No. 72-482 marked Government's Exhibit 30 for identification.

A two-page arrest record of James McCormack marked Government's Exhibit 31 for identification.

(So marked.)

THE COURT: I am asking the Clerk to seat the Jury, Mr. Passalacqua.

. Please rephrase the question, Mr. Weintrau

DIRECT EXAMINATION

BY MR. WEINTRAUB: (Cont.)

Q Did you have a meeting in the fall of '67 with Mr. Mattio in which Mr. Mattio asked you if you wanted to sell drugs?

A I am sorry, I can't recall it at the moment.

I would like you to look at Government's Exhibit 25, page 3, start at the top of the page and read down to line 18, if you would, please.

THE COURT: What is the question, Mr. Weintraub?

Q Does that refresh your recollection about that meeting in the fall of 1967?

THE COURT: Try to answer yes or no. Does

it refresh your recollection? Do you now recall?

THE WITNESS: Parts of it refresh it and parts
don't.

Q Did you have a meeting in the fall of '67 with Thomas Mattio?

A I think I saw Mr. Mattio a couple of times.

I saw him at a christening --

Q Yes or no, did you have a meeting?

A Can you say where is the meeting?

THE COURT: I will allow you to ask the question in conventional form -- were you before a Grand Jury?

THE WITNESS: Yes.

THE COURT: Did you give testimony before a

Grand Jury?

THE WITNESS: Yes.

THE COURT: Was this question asked of you and did you give this answer:

All right, Mr. Weintraub.

MR. WEINTRAUB: Thank you, your Honor.

"Question: A week later did you meet with Mattio at the Pow Wow -- a week after October 13, '67--

"Answer: Approximately a week later.

"Question: Was Mattio alone?

"Answer: I got there first, he came later. He was alone, yes."

Were those questions asked and was that the answer you gave?

A I honestly don't recall.

THE COURT: Next question and next answer, Mr. Weintraub.

MR WEINTRAUB: "Question: At that meeting, did Mr. "

THE COURT: Were you asked this question and did you give this answer?

MR. WEINTRAUB: Yes, your Honor.

(continued next page.)

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At that time, were you asked this question and did you give this answer:

"Question: Did Matteo state to you how he knew you used heroin and that he had a few ounces, and asked if you could get rid of it for him?

"Answer: Yes."

"Answer: Yes."

Do you recall that question and that answer?

A I recall the conversation, but not that question and not that answer.

2 Do you recall this question and answer being asked:

"Question: January of '68, did you meet Matteo and give him a couple of ounces of heroin to turn over and -- he gave you a couple of ounces of heroin to turn over to sell, in other words, is that correct?

Do you recall that question and that answer being given?

A No, I don't recall that question at all nor that answer.

Do you recall this question, beginning on line 23 page 3.

"Ouestion: In later that month or in Pebruary, did Matteo meet you and ask you to drive him to a

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McCormack - direct

restaurant in Manhattan?

"Answer: Yes, he did."

- A Would you repeat that, please?
- O Do you recall this:

"In later that month or in February, did Matteo meet you and ask you to drive him to a restaurant in Manhattan?

'Answer: Yes, he did."

This is referring to February of 1968.

A That sounds familiar. I am not positive.

THE COURT: Did you give that answer to that question before the Grand Jury?

THE WITNESS: Your Honor, I am trying to explain.

THE COURT: What is your recollection, that you did or you did not?

THE WITNESS: It sounds familiar. I am not positive.

Q Was this question asked:

'Did you drive him to that restaurant in Manhattan?

"Answer: Yes."

Do you recall that?

A Offhand --

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1cCormack - direct

THE COURT: Did you give that answer to that question before the Grand Jury?

I am going to read a series of questions -THE COURT: I want to know the answer to that
last one. Did you give that answer to that question
before the Grand Jury?

THE WITNESS: Did I? I don't know.

THE COURT: That is your best answer?

THE WITNESS: Yes.

THE COURT: Next.

I am going to read a series of questions and I would like you to tell me if you recall these questions and answers being given in sequence in the Grand Jury:

"Do you recall that you marked in front of the restaurant and recognized an individual?

"Answer: Yes.

"Question: Was that individual a man named Red Maconi?

"Answer: Yes.

"Question: M-a-c-o-n-i?

"Answer: I thought it was Marconi.

"Question: Did Mr. Marconi get into the

back seat to talk to Matteo?

"Answer: I stayed behind the wheel. They

McCormack - direct

came out of the restaurant and got in the back seat.

That's when I saw Ped Maconii

"Question: Did Maconi explain to Matteo that the heroin Matteo had given him was bad?and did he return that package of heroin to Matteo?

"Answer: He said he couldn't get rid of it."

Do you recall those questions being asked and those answers being given by you?

Answer: With all respect to the Court, I am going to say this is -- I don't know how many years.

THE COURT: Can you answer the question?

Did you give those answers to those questions?

THE WITNESS: At the moment I can't recall

what happened last night fully.

THE COURT: Next question.

Again I will read a series of questions to you and I would like you to pay attention and tell us if you remember

THE COURT: Tell us if you gave those answers to those questions.

MR. WEINTPAUB: Yes, your Honor.

In February of that year, did you drive Matteo to the Thunderbird Diner in Bayside?"

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McCormack - direct

That would be February of 1968.

"Answer : Yes.

"Question: Was Matteo driving when you went there?

"Answer: I drove. I had the car. I had a
'64 Studebaker. I drove him to the Thunderbird Diner
and he took the car and went to pick up another
individual.

"Question: So you were dropped off in the diner?

"Answer : I waited at the diner.

"Question: Did he later come and pick you up at the diner and drive you to an apartment a few blocks away?

"Answer: Yes.

"Question: Did he introduce you to a man in that apartment named John Indiviglia?

"Answer: Yes, he did."

Were those the questions that were asked of you and the answers you gave?

A Again I would have to tell you that I was under sedation when those questions were taken. I had a lot of trouble in the jail last night. I was beaten.

Are those the questions that were asked and the

answers that you gave?

A With all respect, I think I should see a doctor. I am getting sick now.

THE COURT: Can you answer that question yes or no?

THE WITNESS: I can't answer it.

I am going to ask you a series of questions again, and I will ask you if those were the questions put to you and the answers that you gave the Grand Jury:

"Is that John Indiviglia also known as Charlie Indiviglia?"

A I have no idea.

Q (continuing) "Answer: I found out through the papers. I knew him as John.

"Question: Did Indiviglia ask you to line up people to move heroin for him?

"Answer: Yes, he did.

"Question: Did you agree to do that?

"Answer: I told him I'd see what I could do, yes.

"Question: Did you, in fact, line up individuals to sell heroin to him?

"Answer: Yes."

Were those the questions that were asked and

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McCormack - direct
the answers that you gave to the Grand Jury?

A It may be down there, but I don't mmember those questions at all.

THE COURT: Next.

Q "In April of May of 1968, did you drive with Matteo to a restaurant in Manhattan to meet Maconi and a guy named Teddy Miller?

"Answer: Yes.

"Question: Was Mattec's purpose in meeting Miller to arrange deals so that Miller would sell heroin for him?

"Answer: Yes.

"Question: For Indiviglia?

"Answer : Yes.

"Question: Did Maconi meet Matteo and yourself at the restaurant?

"Answer: Yes. We were in the restaurant. He came in.

"Question: Did you then leave the restaurant?"
"Answer: Yes.

"Did Matteo tell you later that he had met Miller that day?

"Answer : Yes."

Were those the questions that were asked and the

McCormack - direct

answers that you gave?

Again, I am going to tell you I am sick right now and I would like to see a doctor.

> THE COURT: Can you answer those questions? Did you give those answers to those questions? THE WITNESS: As far as I know, in '68 I didn't say Matteo.

THE COURT: Did you give those answers to those questions?

THE WITNESS: I don't recall. (continued next page.)

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McCormack - direct

"From February to May of '68, would you say that you met Indiviglia at least a dozen times?

"Answer: Approximately.

'Question: Was the purpose of that to get heroin and to test it?

'Answer: Yes.

"Question: For later sale?

"Answer: To get it to sell it and test it.

"Question: Would you give the money to

Indiviglia for the heroin?

"Answer: Yes.

"Question: You wouldn't give it to Matteo, is that correct?

"Answer: I started by giving it to Matteo, but Indiviglia called me on the phone one day and told me to meet him personally and that he wanted me to give him the money personally.

"Question: Was the quantity of heroin about an eighth of a kilogram of heroin?

"Answer: Approximately.

"Question: Would that be about four ounces of heroin: is that correct?

"Answer: Yes.

"Question : About a quarter of a pound?

McCormack - direct

Answer: Yes."

Were those questions asked and were those the answers that you gave when you were in the Grand Jury?

A Your Monor, I respectfully -- he read three pages of questions -- I don't remember two or three of them that he just asked.

THE COURT: Do you remember giving any of those answers to any of those questions?

THE WITHESE: I may have given some answers.

THE COURT: Do you want him to go over each one at a time?

THE WITNESS: I would like to see a doctor, if I may.

THE COURT: The jury may be excused.

(Jury leaves courtroom.)

THE COURT: Put on the record what your symptoms are and how you feel.

THE WITNESS: I have dizziness, my stomach -I feel I am going to upchuck. I showed you all the
bruises. I was punched repeatedly in the stomach.

I am on medication. I was refused it this morning. Yesterday they gave it to the deputy to bring over here and administer it. The deputy asked for it this morning and he -- and they refused to give it to

him.

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I don't know how to verbalize it -- I am losing all semblance of sanity. I don't know what is going on.

THE COURT: Would you get my chambers on the wire, please?

(Pause.)

You continue answering questions. As far as I am concerned, from what I see about you, Mr.

McCormack, you are no worse off than you have been and you are just using this as another ploy to disrupt the trial and delay this trial.

THE WITNESS: I have no reason to delay the trial.

THE COURT: Well, I am not too sure.

Bring the jury in. We will get a doctor for you and we will try to confirm my suspicions.

THE WITNESS: I have alf the medical records.

THE COURT: You will get a complete examination.

I will see to that.

(Jury present.)

THE COURT: Continue, please.

DIRECT EXAMINATION

BY MR. WEINTRAUB: (continuing)

McCormack - direct

Q I am doing to go back over that last series of questions --

THE COURT: Please don't. Continue from where you left off.

MR. WEINTRAUB: From where I left off?

THE COURT: That is right.

MR. WEINTRAUB: Thank you.

Did you meet Indiviglia on those 12 or so occasions at Thunderbird Diner or a supermarket or a luncheonette in Bayside?

"Answer: All of those occasions, different times.

Question: Those were the three locations you generally met him at?

"Answer. He came over my house also.

"Question: During one meeting, did Individia give you five quarter ounce packages of heroin to test?

'Answer: "es.

Question: Were those quarter ounces all tested?

'Answer: Yes.

'Question': Did Indiviglia take down the number of the best package?

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McCormack - direct

'Answer' Yes.

Question: Did he leave them?

Answer: Yes."

were those questions asked and were those the answers that you gave the Grand Jury?

A I don't recall.

On May 16th, 1968, were you cited for violating your parole by your parole officer?

'Answer: Yes.

Question: Was the reason for the violation the fact that you had quite your job and that you had owned a car?

Answer: I had quit my job without notifying the parole officer and I had owned a car.

Question: Was the length of your violation of parole 62 days?

'Answer: Yes.

Question: To help you out with this parole violation, did John Indiviglia write a letter for you to the parole officer?

Answer: Yes.

Ouestion: Did the letter state that you worked for Indiviglia in a supermarket for a period of time?

McCormack - direct

"Answer : Yes."

Were those questions asked and did you give those answers in the Grand Jury?

A I don't know if he wrote a letter for me. I know I worked for him in a supermarket a few times.

Q Ware those questions asked and did you give those answers?

- A I don't know the context.
- Q I will continue reading the questions.

You also know an individual named Frank Aguiar?
'Answer: Yes.

"Question: And in July of 1968, did you call up Frank Aguiar and did he say to you that Tyler Somas wanted to see you?

'Answer: Yes.

Question: Did you then go to Frank Aguiar's apartment?

Answer: Following night I went.

Question: Did you meet Tyler Somas there?

Answer: Yes.

Question: Did you go with him to an apartment in Flushing?

Answer: Yes.

Question : Did Somas tell you -- " Let us stop there.

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McCormack - direct

Were those questions asked and were those answers given by you in the Grand Jury?

A At the moment I can't think at all. I'd like to repeat again, when I was in front of the Grand Jury, I was heavily sedated by the doctor in Kew Gardens prison, before going before the Grand Jury. The records there will show it.

(Pause.)

MR. WEINTRAUB: I would like a ruling on the next question.

THE COURT: May I see it?

(Document handed to Court.)

MR. WEINTRAUB: Line 22 .

MR. KROHN : No objection.

MR. WEINTRAUB : Fine.

THE COURT: No objection?

MR. KROHN: To eliminating the question.

THE COURT: That question is eliminated.

Don't ask it.

MR. WEINTRAUB: Yes, your Honor.

BY MR. WEINTRAUB:

Q

Continuing on line 25, page 9:

"A week later, did you go over to Somas'

spartment in Flushing and were you told by Somas that

McCormack - direct

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you were going to pick up an eighth of a kilogram of heroin?

"Answer: That he was going to pick up. He wanted me to go along with him. He was going to pick up an eighth of a kilo.

"Question: Did he give you a weapon and money?
"Answer: Yes.

"Question: At the time you were going along with him?

"Answer: Yes.

"Question: Did you drive to Atlantic and Pennsylvania Avenue in Brooklyn and go into a parking lot of a White Castle?

"Answer: Yes.

"Question: While you were in the parking lot, did two white males drive up in a Caddy?

"Answer: Yes.

"Question: Did Somas go into the White Castle with the two men?

'Answer: Yes.

'Question: Did Somas come out a short time later and say to you that a deal was set for the next day?

"Answer: The following morning, right. "

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McCormack - direct

Were those questions asked and were those the answers that you gave?

A I am not sure of the questions and answers, but it's familiar -- you know -- I remember Somas.

"On the next day, did you go to Somas' apartment early in the morning?

"Answer: Yes.

"?uestion: Did Somas and you drive back to the White Castle?

"Answer: We drove back to the White Castle but -- Yes, we didn't stay there though.

"Question: Did a white male show up in a Caddy at the White Castle?

"Answer: Yes.

"Question: Did you follow him around Brooklyn to President Street?

"Answer: Yes, I think it was President Street.

"Question: And you parked near a bar around President Street anyway?

Answer: Yes.

"Question: Did you then go into the bar?

'Answer: Yes.

'Question: And a short time later, did you leave the bar, go into your car, take the money out

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McCormack - direct

of the car, return to the bar and give the money to
the driver of the Caddy?

"Answer: Yes.

"Question: A few minutes later, did the driver of the Caddy get a phone call and tell you that the things were okay?

"Answer: He told -- I was with Tyler. He says, 'Everything's okay.'

"Question: Somas and you then leave the bar and go back to the car?

"Answer: Yes.

"Question: And inside the car on the floor, did you find a packet of heroin?

"Answer : Yes."

Were those the questions asked and the answers that you gave?

A I am not sure at this time.

MR. WEINTRAUB: I will continue.

Page 12, line 8.

"And inside the car on the floor, did you find--"
I have read that already.

"Did you ever go with Tyler Somas to Teddy Miller's apartment to pick up heroin?

'Answer: Yes.

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McCormack - direct

"Question": Would that be on about three occasions?

"Answer: Approximately, yes.

"Question: Did you actually see the deals go down?

"Answer: I never saw Teddy Miller handing the heroin, but I know he got it from him.

"Question: Where were you at the time that the heroin was given to him?

"Answer: Usually waiting in the car.

"Ouestion: Was that somewhere around 17th
Street in Manhattan, the East Side of Manhattan?

"Answer: It was downtown Manhattan."

Were those questions asked and were those the answers that you gave to the Grand Jury, Mr. McCormack?

A I am sorry, I am going to have to again say that I am not feeling well -- I am hardly following what you are talking about.

THE COURT: The next question and answer, please.

Q "Around July and October of 1968, was Somas getting his heroin from Miller instead of Indiviglia?

"Answer: I think he was getting it from both, but he was dealing mainly with Teddy Miller, as far as

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McCormack - direct

MCCOLINGCA - GIFEC

I know.

"Question: In November of '68, were you arrested for a parole violation?

"Answer: Yes.

"Question: Were you incarcerated until March 18, 1971?

"Answer: Yes."

Were those questions asked and were those the answers you gave?

A I don't know if the questions were asked, but I was violated around that time.

Q "A few days after March 18th, 1971, did you go with your brother Mickey to the Club International On West 48th Street in Manhattan and meet with Frank Breen?

"Answer : Yes."

(continued next page.)

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McCormack-direct

Q (continuing reading) "Question: Did you talk with Mickey and Frank Breen about Mickey, your Brother, and Frank Breen about Towny Matteo?

"Answer: Yes.

"Question: Did Breen say that Matteo would get in touch with you?

"Answer: Yes.

"Question: A few nights later, did you get a call from Frank Breen?

"Answer: Yes.

"Question: Did he tell you to go to the Rainbow on 116th Street in Queens where you would meet Towny Matteo?

"Answer: Yes. He just told me to come there, you know, when I got there, Tommy was there."

Were those questions asked and were those answers that you gave in the Grand Jury?

A I'll have to repeat what I just repeated before --

THE COURT: All right, next question and the next enswer.

Q "Question: Matteo was there. Did he talk to you about going back into the business?

"Answer: Yes.

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McCormack - direct

"Question: Did you, at that time, agree to go back into the business?

"Answer: Yes."

Were those questions asked and were those the answers you gave?

- A what -- What -- What period of time was this you are talking about?
- O This is in 1971, March, right after you were released from jail for parole violation.

THE COURT: The question and answer once more?

BY MR. WEINTRAUB:

Q The next:

"Question: From May of '71 to August of '71" -THE COURT: No, the question that was not
answered.

- Q Were these questions asked of you and did you give those answers?
 - A What questions?
 - The ones I just finished reading.

THE COURT: The last question, Mr. Weintraub, and the last answer that was not answered, that is the question which he wants.

Q "Question: Matteo was there. Did he talk to you about going back into the business?

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McCormack - direct

Answer: Yes."

THE COURT: Were those questions asked, and were those the answers you gave?

THE WITNESS: I don't remember, your Honor.

THE COURT: All right, next.

BY MR. WEINTRAUB.

Question: From May of '71 to August of '71, were you dealing in junk with Frank Breen at his apartment in Rego Park, off Woodhaven Boulevard?

"Answer. Yes."

- A Was I dealing from May until August?
- ? From lay of '71 -- Well, let me read it:

Question: From May of '71 to August of '71, were you dealing in junk with Frank Breen at his apartment in Rego Park, off Woodhaven Boulevard?"

- A I was committing robberies --
- Q' Were you --
- A (continuing) -- at that time.
- Were those questions asked of you and is that the answer you gave?
 - A I don't remember.
 - ? mestion. Where you picked three ounces of heroin every other day or so?

Answer: Approximately.

McCormack - direct

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"Question: There come a point in time when Frank Breen told you that Matteo was out of heroin and was awaiting a shipment?

"Answer; Yes.

"Question: In October of that year, did you get in touch with Tyler Somas and meet him at his apartment in Manhattan?

"Answer: Yes, 33rd Street.

"Question: Did Somas give you some heroin at that time?

"Answer: He gave me enough to tie me over for my habit."

My personal use, yes, I remember that.

THE COURT: Do you remember that answer to that question?

THE WITNESS: . What?

THE COURT: Do you remember that answer to that question?

THE WITNESS: I remember Tyler giving me some junk.

THE COURT: Do you remember that answer to that question?

THE WITNESS: No.

THE COURT: You say that was just for your

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McCormack - direct

personal use?

THE WITHESS: I remember this guy giving me some funk because I was sick.

THE COURT: The only question is, whether you gave those answers to those questions.

THE WITNESS: I don't, I'm sorry.

Will you repeat that, about that Tyler Somas?

BY MR. WEINTRAUB:

This is question on line 14:

"Question: Where you picked three ounces of heroin every other day or so?

"Answer: Approximately.

"Question: There came a point in time when Prank Breen told you that Matteo was out of heroin and was awaiting a shipment?

"Answer; Yes. "

Were those questions asked and were those the answers you gave in the Grand Jury?

- A I don't recall.
- "Question: In October of that year, did you get in touch with Tyler Somas and meet him at his apartment in Manhattan?

"Answer: Yes, 33rd Street.

"Question: Did Somas give you some heroin at

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McCormack - direct

that time?

Answer: He gave me enough to tide me over for my habits.

Question: For your habit?"

THE COURT: Do you remember being asked that question?

THE WITNESS: I don't remember the questions, I remember Somas giving me some heroin.

THE COURT: No, the question is, do you remember those answers to those questions.

THE WITNESS: No.

THE COURT: All right.

lext.

Question: Did you ask Somas why everybody was dry?

Answer: Yes.

"Ouestion: Did he tell you that Indiviglia was out of the country picking up some heroin?

"Inswer: Yes."

Were those questions asked, were those questions asked and are those the answers you gave?

Without antagonizing the Court again, I am going to tell you what I repeated constantly, I don't remember what happened last week, I took a bad beating last night --

McCormack - direct

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THE COURT: Next question, next question.

THE WITNESS: I don't know --

THE COURT: Continue, Mr. Weintraub, at a quicker pace, if you don't mind.

Q "Question: Did he also tell you that everybody was waiting for him to come back and that Somas had given -- Somas himself had given Indiviglia about \$50,000 or \$75,000 to pick up some heroin for Somas?

"Answer: Yes.

"Question: And a few days later, was there a sudden wealth of heroin among the people you knew?

"Answer: Well, Frank had stuff. Everybody had stuff again.

"Question: Did you get a call from Frank
Breen who told you to come and pick some up?

"Answer: Yes.

"Question: From October, after the drought of heroin, to December of 1971, were you picking up heroin on a frequent basis from Frank Breen and Tyler Somas?

"Answer: Not as frequently as I had been before, but I was picking it up."

Were those questions asked and were those the

McCormack - direct

answers you gave?

- A Prom when to when?
- Q The time period is from the end of the drought in October of 1971 through December of '71?
 - A I don't recall.

THE COURT: Next question, please.

Q "Question: During this period, did you see

Matteo give a package to Frank Breen outside the

Rainbow on 116th Street in Queens?

"Answer: Yes.

"Question: Later in January of 1972, were you arrested for bank robbery?

"Answer: Yes."

Were those questions asked, and were those the answers you gave?

A I was arrested in January '72 for bank robbery if they asked me that, then that is true.

THE CCURT: Anything further, Mr. Weintraub?

MR. WEINTRAUB: NOthing further, your Honor.

THE COURT: Cross examination, Mr. Krohn? (continued next page.)

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24 25 McCormack-cross/Krohn

Actec, for the past 8 months I was at Actec for correctional treatment and evaluation.

Have you been on the street during the last three years?

No.

In other words, you have been in the custody of the New York State Department of Correction during that time?

Yes.

Are you receiving any treatment of any sort as an inmate under the jurisdiction of the New York State Department of Correction?

A For the past 8 months I have been receiving intensive treatment.

Will you describe your treatment, if you know what the treatment is?

I can describe the treatment very well:

I was sent from Auburn to an experimental psychiatric program, psychological program at Actac, it is called Stress Assessment, wherethey create stress situations, they keep you under stress 24 hours a day to see your reaction, at the same time there is intensive therapy, they have doctors, psychologists and psychiatrists and chemists, I spent 6 months there. Well, that program is being phased

McCormack - cross/Krohn

out because it is a failure, almost every guy that went through that program is either in the nut house now or else in another prison.

After about 6 months there -- there was a violent incident that happened with a lot of inmates in the place, and I requested to get out.

They sent me to the diagnostic and treatment center, which is another program in the same building over there, you undergo intensive psychotherapy six days a week, they have group therapy, and well, it is a whole -- I don't know how to describe it, it is a psychological -- they -- they -- you are constantly under psychological pressure.

- In connection with this program that you are in, are you presently taking any drugs or medication?
 - A I am receiving Valium right now.
 - Q Valium?

- A Yes, sir.
- Q Do you know what quantity of Valium?
- A Pardon me?
- Do you know what the quantity of Valium is, how much do you take?

A I have been -- I am supposed to be getting two twice a day, I didn't receive it.

O Do you know when you were brought down from

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McCormack-cross/Krohn

121A

the Clinton Prison to testify at this trial?

The best I can tell you about that, sir, is that they took me out of my cell before breakfast one morning last week, they didn't tell me anything, they didn't give me a chance to pack up any belongings, they brought me out, threw me on a plane and brought me down here.

- Since that date, you said that was last week --
- I think it was last week.
- Have you been receiving your medication?
- I received my medication up until yesterday; After I was beaten by the officers, I stopped receiving medication, I haven't seen a doctor.
- Now, you heard the United States Attorney make reference to reading from Grand Jury testimony that took place in 1972, December 27, '72, now do you have any present recollection of your testimony before that Grand Jury?
 - I remember appearing before the Grand Jury. A
- Do you recall whether or not at that appearance -- were you in custody or on the street at the time you made that appearance?
 - A I was in jail.
 - In what jail were you at that time? 0
 - At that time, in Queens.
 - You were brought to the Federal Grand Jury 2

1	2 Thomsen - direct
2	THOMSEN, called as a
3	witness, having been first duly sworn by the Clerk
4	of the Court, testified as follows:
5	DIRECT EXAMINATION
6	BY MR. WEINTRAUB:
7	Q Lt. Thomsen, by whom are you employed?
8	A I'm with the Suffolk County Police Department
9	Second Precinct in Huntington.
10	And how long have you been employed by the
11	police department?
12	A Be 14 years in November.
13	Were you on duty on November 27, 19 strike
14	that.
15	Were you on duty on September 27, 1972?
16	A Yes, sir, I was.
17	And did you respond to a call at 11 Caton
18	Street, in East Northport, New York?
19	A That's correct.
20	And did you have occasion at that time to ente
21	the premises of 11 Caton Street?
22	A Yes, sir, 1 did.
23	Q Will you describe for us what you say when you
24	entered?
25	A I broke into the house. It was all locked up.

Thomsen - direct

I looked from outside and I saw a pair of feet protruding from behind a refrigerator. I assumed somebody was laying there so I broke a window and gained entry.

when I entered the place, I found a male subject lying face down on the kitchen floor. He appeared to have numerous holes in his back and one in the back of his head.

I then started to reach for a phone since I saw him still breathing or blowing bubbles of blood, and at that time I noticed a revolver in his right hand. He was laying face down. I then called for an ambulance, to ship him to Huntington Mospital.

Do you see the individual that you found in 11 Caton Street in Court today?

- A I do.
- would you point him out for us?
- A Sitting next to his attorney at the table.

 MR. KROHN: Stipulate identification, your

 Honor.

THE CLERK: Large photograph marked Government's Exhibit 32 for Identification.

(So marked.)

THE COURT: I assume you are employed as a police officer with the Suffolk County --

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Thomsen - direct

THE WITNESS: I was a sergeant at the time.

THE COURT: All right.

THE CLERK: Black case marked Government's

Exhibit 33 for Identification.

(So marked.)

THE CLERK: Plastic envelope with objects enclosed marked Government's Exhibit 34 for Identification.

(So marked.)

BY MR. WEINTRAUB:

Lieutenant, let me show you Government's Exhibit 34 for Identification and ask you if you can identify that?

A I can't see through the plastic too well.

THE COURT: If you have any difficulty, just tear it apart.

Is there any objection to this, Mr. krohn?

MR. KROHT: Your Honor, I have no objection.

As a matter of fact, I would stipulate that these are the materials that actually were found in the home on Caton Place.

THE COURT: Do you have any objection to this specific exhibit? That's what --

MR. KROHA: No, I have no objection to that

Thomsen - direct

exhibit, your Honor.

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THE COURT: All right.

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BY MR. WEINTRAUB:

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Q Is this the weapon that you found in the hand of Mr. Mattio?

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A That's correct.

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What was the condition of the weapon when you

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found it?

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A It was in his hand, his finger was still -on the trigger guard. I removed the weapon from his hand
and placed it on the table without touching it at the time,

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until the lab -- laboratory could respond to check it out.

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Q Was it loaded?

...

A Yes, sir.

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Q Were there any discharged shells?

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A Yes.

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llow many?

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A When the lab men came there, they then opened the cylinder. One had been discharged.

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MR. WEINTRAUB: The Government offers Exhibit 34 in Evidence.

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THE COURT: Mr. Krohn says no objection.

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MR. KROHN: No objection.

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THE CLERK: 34 marked in evidence.

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Thomsen - direct

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(So marked.)

Did you find any other objects in the house 2 at that time?

Yes. I called for the detectives and when some detectives responded, a type of a briefcase was found, approximately five feet from the -- where the body was laying, which time one of the detectives opened it up by cutting it open and they found a large amount of money.

- Were you present when this was taking place?
- I was present when they opened it up and they removed the money from the case.
- Is -- well, would you look at Government's Exhibit 33.
 - A Yes.
 - Is that the case?
 - Yes.

MR, WEINTRAUB: The Government offers 33 in evidence.

MR. KROHN: No objection, your Honor.

THE COURT: Let it be marked.

THE CLERK: Government's Exhibit 33 previously

marked for identification, now marked in evidence.

(So marked.)

Was anything done to the money at the time it

Thomsen - direct

2 was removed?

A Ye. It was laid out on the floor. There was no rug in the house. They had an -- undermatting, it's like a horsehair matting, was laid out on the floor there and a detective Ray Claus from our Identification Bureau took a photograph of it.

Q Is this a fair representation of the money that was photographed?

A Yes, sir.

MR. WEINTRAUB: Government offers Exhibit 32 in evidence.

MR. KROHN: No objection.

THE COURT: Let it be marked.

THE CLERK: Exhibit 32 previously marked for identification, now marked in evidence.

(So marked.)

THE COURT: May I see that for a minute? BY MR. WEINTRAUB:

by the way, were the packets of money that are shown in Government's Exhibit 32, were they marked or shuffled or disturbed in any way other than to lay them out before that photograph was taken?

A No. They were packaged with rubberbands and one with a paper band. They were laid out as they came out

1		Thomsen - direct
2 2	DIRECT EXAMIN	ATION
3	BY MR. WEINTR	AUB: (Cont.)
4	Q	Fine. Nobody disturbed them?
5	A	No. Nobody separated any bills or anything.
6	They were lai	d out in the packets.
7	Q	Would you remove the contents of that case?
8	A	I don't know how to open it.
9	Q	Take it easy. It's only money. It's only
10	money.	
11	A	Do you want 1t removed?
12	Q	Yes.
13		MR. WEINTRAUB: Can we mark these collectively
14	as an	exhibit?
15	Q	Is that the money that was seized at that time
16	A	Yes.
17		MR. WEINTRAUB: I'd ask' that the money be
18	marked	collectively as an exhibit and I offer it in
19	eviden	ce.
20		THE COURT: Suppose you put it back in the
21	valise	and the valise will not be an exhibit,
22	just he	old the money that was seized, Exhibit number?
23		THE CLERK: It's all right, mark it 35, your
23		This Cubin. It's all Fight, in

THE COURT: Just mark it.

Honor.

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THE CLERK: For identification?

THE COURT: Is there any objection to it being

marked in evidence?

MR. KROHN: No objection at all, your Honor.

THE CLERK; So marked, Government's Exhibit

35 in evidence.

(So marked.)

THE COURT: IF you would like any of the exhibits passed around to the jury, I assume this will be the move, then let it be done now.

MR. WEINTRAUB: Okay, your Honor.

Are you proposing --

THE COURT: I am not proposing anything.

I am assuming that Sgt. Thomsen -- have you been promoted since?

THE WITNESS: Lt. Thomsen.

MR. KROHN: No objection.

THE COURT: -- Lt. Thomsen may want to take custody of it and I'd assume you have no objection to him removing it from the courtroom after he leaves?

THE COURT: This may be the only opportunity; if you want to show it, show it now.

MR. WEINTRAUB: There will be further opportunity, your Honor. We have made arrangements to have it here.

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Thomsen -dross

withdraw that question. The -- a report has been given to me by the U. S. Attorney which is signed by you.

A That is correct.

I wonder if I could shoe this to you. I don't know what marking you have on this exhibit.

MR. WEINTRAUB: Government's Exhibit 27 for identification.

THE COURT: Suppose you give the witness the copy and you can examine on it.

Are you familiar with that report, Lieutenant?

A That is right.

Now, this report indicates that the weapon was a Smith & Wesson; is that correct?

A That is correct.

Q And also in this report it indicates that it was a two inch blue revolver?

A That is correct.

Is a two inch revolver sometimes known as a snub nose revolver?

A That is correct.

Q So was it fair to say that this would be familiarly referred to as a snub nose Smith & Wesson revolver?

A You could refer to it as that but I referred to it as a two inch.

Q Two inch.

Thomsen- cross

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You indicated in this report that the revolver was turned over to Det. Fitzgibbons for prints or -- so it could be dusted for prints?

A No. I -- identification takes for the prints.

The laboratory then takes it for analysis to see if the gun
would fire. Lab tests.

Q Fine. To your knowledge, was any -- any fingerprints taken from the weapon?

A To my knowledge, no, sir.

Q To your knowledge, was any type of a test performed upon Mr. Mattio to determine whether or not he had recently fired a weapon?

A I couldn't answer that, sir. That would be the lab that would do it. If it was done.

Q You don't know whether or not --

A I could not say.

Right. You don't know, to your knowledge, whether or not the weapon had been fired, by Mr. Mattio?

A No, I couldn't say that.

Q All right.

Nor do you know, to your knowledge, whether or not Mr. Mattio's fingerprints were on that weapon?

A Not to my knowledge.

Would you describe again, Mr. Mattio's condition-

531 6 1 Thomsen - cross 132A when you came in? 2 3 As I came in? 4 Right. He was laying down. His right arm was over 5 his head on the floor, with the weaponin his right hand. 6 And you said in your direct examiation, very 7 obviously, there had been some holes in him, is that your 8 understanding? 9 A Appeared to be, yes. 10 Appeared. One was a wound in the head? Q 11 A Yes. 12 Others in the back? 13 A That is correct. 14 A lot of blood? 15 Not -- there was blood. Not that much. He 16 was bleeding from the mouth and the other wounds were really 17 not bleeding. They --18 Did any of your officers accompany Mr. Mattio 19 to Huntington Mospital? 20 Detectives did. 21 Detectives did. In other words, they took Q 22 over --23 That is correct. A 24

-- t he case at that time? Did you subsequently

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THE COURT: When will he be here?

MR. WEINTRAUB: I was informed a few moments ago that he was enroute and would be here shortly.

at 1:45.

Will that be the Government's case?

MR. WEINTRAUB: That and an expert to testify about the equipment and the statements that Matteo gave after his arrest will be the Government's case.

THE COURT: Let me say this:

You only intend to introduce through Mr.

Dichie, the statements that he gave then? That's all I said was admissible. I heard somethings as to what he said in the courtroom while waiting for the magistrate.

MR. WEINTRAUB: I had intended to offer all of the statements.

THE COURT: We have a problem on the second set of statements, on United States against Collins, once a witness has said, "I do not want to talk any more," It has to be clear that he then waived that right and there is nothing in the record that indicates to me that when he sat in court he was then made aware again of his

constitutional rights.

I was very careful to say that from the time of his arrest to the time that Mr. Richie questioned him, Mr. Matteo said nothing that indicated that he refused to answer questions.

However, after he answered a few, he said,
"I want to talk to my father," or he made a call to
his father. I do not think he ever spoke to him.

Then he came back and said, "I don't want to answer any more questions."

I will not allow the additional statements in the courtroom.

MR. WEINTRAUB: Yes, your Honor.

THE COURT: I want to make sure. You understand me then?

MR. WEINTRAUB: I do.

THE COURT: It wasn't my understanding that you intended to offer those without proof that they were again given to him.

When he was waiting for the magistrate, during that time, where was his lawyer?

MR. KROHN: He was enroute or in the building. I suppose he was in the building.

If I recall the testimony of Agent Schnepper, customarily they would not leave for the magistrate's

office until such time that they were advised the defendant's lawyer was present.

MR. WEINTRAUB: I believe 'Ir. Richie testified that they came to his office and were waiting for the lawyer to go up and conduct the arraignment. I assume he was enroute.

THE COURT: They were waiting for him at the United States Attorney's office?

He was supposed to be there?

MR. KROHN: Pight.

though I disapprove of any practice, when the United States Attorney interviews defendants in custody — apparently it is permissible — but after being asked a few questions and the defendant says, "I don't want to answer any more questions," from that point on there is a red flag and there has to be the most convincing proof that the Miranda warnings were given again, that he fully understands, that he was reversing his position once stated.

Absent that, those statements are not admissible.

MR. WEINTRAUB: Yes, your Honor.

THE COURT: There is nothing in the record to indicate that you have a right to introduce those

statements.

MR.KROHN: With respect to the so-called narcotics equipment, I certainly have no objection to stipulating.

MR. WEINTRAUB: I want to prove uses.

THE COURT: That was the fruit of the search?

MR. KROHN: He went further, he says he wants to prove the usage.

I would stipulate to that. I would stipulate they're narcotics implements. He doesn't have to go into detail.

THE COURT: Mr. Krohn could then proceed.

Do you know if you are going to put Mr. Matteo on?

MR. KROHN: Yes, I will.

THE COURT: So we may be able to finish tomorrow?

MR. WEINTRAUR: I accept the stipulation, and I would state at this time when the Government closes, we would reserve the right -- should Mr. Summers come in -- to call him.

THE COURT: Not only re-open, but Mr. Krohn represents that he will put Mr. Matteo on.

Certainly, under those circumstances, where the Government has used all efforts -- you have no

me. At the beginning of the conversation I advised him -- I anked him if he had been advised of his rights and he stated that he had by the agents of the DEA. I then, as I recall it, advised him of his rights myself.

At that time he stated that he understood his rights and we then proceeded to speak. The course of our conversation was as follows:

Mr. Mattio was asked by me if he was willing to cooperate with the Federal Government. He was asked particular questions about individuals who he knew who were dealing in heroin. He was asked if he knew anyone out on Long Island who was dealing in heroin and he stated at that time that the only individuals he knew on Long Island who were dealing in heroin were Frank — meaning Frank Aguiar and the guy who shot him — he didn't specify the name — who shot him — Mr. Mattio.

we were speaking for about twenty minutes and all I -- the only other conversation that I recall was as follows:

I asked him what he was doing himself now -was he dealing in junk and he stated he was not, that he was
broke. I stated to him or I said to him, "How can you be
broke, you have got plenty of money"and he stated "If I had
plenty of meony why did I have to borrow \$60,000 from Frank."

Later on in the course of the conversation,

Mr. Mattio stated that the only other people who he knew who
were dealing in drugs were now in West Street; and that I
believe is the essence of that conversation.

Q Was Mr. Mattio standing up during this conversation?

A No, he was not.

Q Was he sitting down?

A Yes.

Q Did he have any refreshments during that time?

A I don't know who brought it in but at one point ne received a cup of coffee.

Q Did he complain to you at any time that he was uncomfortable, in pain and wanted to see a doctor or anything like that?

A I don't recall him saying anything about any pain. I did discuss with him what his physical condition was and he did state he had a limp -- it was apparent that he had a limp. We discussed in general what has happened to him since September of '72 with respect to his physical condition.

What were you doing during those 20 minutes, was there some reason that you were in your office and that Mr. Mattio was there during that span of time?

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JOSEPH THOMPSON , called as

a witness herein, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WEINTRAUB:

THE CLERK: State your name?

THE WITNESS: Det. Joseph Thompson, Suffolk County Police Department.

THE COURT: Lieutenant, will you come to the side bar a moment?

(Side bar discussion.)

THE COURT: I made reference to the cocaine equipment only because it caught my ear when you said something in your opening, but I think it's outside the charge here and I don't want you to offer it unless Mr. Kronn things there is some advantage?

MR. KROHH: I have no concern about it.

THE COURT: You don't care one way or another?

MR. WEIATRAUB: We have limited ourselves to the equipment to deal in heroin.

MR. KROHA: I don't care if the jury knows that --

THE COURT: All right.

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MR. KROHN: I am going to put my client on and he is going to explain his presence in the house.

THE COURT: All right, you can forget the

caveat I just gave you.

(Open court.)

THE CLERK: Objects in carton marked Government Exhibit 36 for identification.

Another object marked Government Exhibit 37 for identification.

Two scales marked Government's Exhibit 38 and 39 for identification.

Bottle with contents marked Government Exhibit 40 for identification.

Object marked Government Exhibit 41 for identification. (All so marked.)

(continued next page.)

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		3	Thompson-direct
pm	2	Q	Detective Thompson, for whom do you work?
	3	Α	Suffolk County Police Department, sir.
	4	2	How long have you been employed?
	5	A	12 years.
	6		
	7	2	You were employed there back in September of
	8	1972?	
	9	Α.	Yes, sir, I was.
		ũ	In what capacity?
	10	A	I was signed to a narcotics squad, sir.
	11	ð	Did you have occasion to go to 11 Caton
	12	Street well	1, September 27, was it?
	13	A	I believe it was in the latter part of
	14	September, 19	72.
	15	9	What was the purpose of going to 11 Caton
	16		mae was one parpose or young to 11 satisfi
	17	Street?	
	18	A	I was assigned to execute a search warrant
		for that prem	ises in order to attempt to uncover evidence
	19	involving nar	cotic activity, sir.
	20	2	Did you find any evidence there?
	21	A	Yes, I did, sir.
	22	0	What did you find?
	23	A	We found scales, all this evidence that I
	24	pesonally fou	nd, scales and various equipment and writings
:	25		a narcotic activity, a narcotic ring, sir.
			H HUR DO DE O HOUR TRUTT OF HIME OF DEC ARING OALS

Thomoson-direct

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7 I'd like you to examine the contents of defendant's exhibit 36 for identification and tell me whether those were items that you found at that residence?

Yes, sir, they are. They have my initials, the date and the case number on it.

9 How long have you been assigned to narcotics investigations?

A 7 years, sir.

2 Do you know what the type of equipment is used for that is in that box?

A Yes, sir, it is used for the testing of the purity of drugs. In other words, to determine what percentage of it is a true drug, sir.

Q I'd like you to look at exhibit 37 -- let's take 37 first.

- A Yes, sir.
- ? Was that found at the same residence?
- A Yes, sir, it was, sir.
- O What about 38, 39 and 40?
- A Yes, sir, everything in front of me now was found there.
 - ? What are those used for?
 - A The scales are used for the weight.

Narcotics are brought by weight, and everyone

Thompson-direct

involved in the business keeps a scale so that, as they say, they don't get ripped off. They weigh the drug before they pay for it.

- Q What is the mineral oil used for? Do you know?
- A This is the final test to determine the purity of heroin. The mineral oil is boiled to a certain degree: there are thermometers in there, as you can see, the Bunson Burner or the infrared lamp is used to heat the substance up to the proper temperature, and the temperature itself determines what the purity of the drug is, sir.
 - Q Why don't they use water?
- A I'm not a chemist, but as far as I know, mineral oil is the only thing you can use. The only thing I've ever heard of anyone using.
- O Did you find other equipment besides the equipment that has been marked for identification here?
 - A Yes, I did, sir, quite a bit.
 - Q About how much equipment did you find?
- A Well, we have 13 cartons, cardboard cartons about that size of large beakers, testing -- all type of laboratory equipment, sir.

He had a virtual laboratory.

MR. WEINTRAUB: I move for the admission of Government's exhibits 36, 37, 38, 39 and 40.

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Thompson-direct

THE COURT: Any objection?

MR. KROHN: No objection, your Honor.

THE COURT: Let it be marked.

MR. WEINTRAUB; I left out the lamp.

- Q Is Government's exhibit ---
- A I explained that. That is used underneath the stand, either that or the Bunson Burner which is used to heat the mineral oil to the degree where the thermometer is inserted.
- Q Was Government's exhibit 41 found with the other equipment?

A Yes, sir.

MR. WEINTRAUB: And I also offer 41 in evidence at this time.

MR. KROHN: No objection.

THE CLERK: Government's exhibit 36 through 41 previously marked for identification, are now marked in evidence.

(So marked.)

MR. WEINTRAUB: I have no further questions.

THE COURT: Mr. Krohn.

CROSS EXAMINATION

BY MR. KROHN:

Q Officer, you went to the premises at Caton

1 Thompson-cross/Krohn 2 Place in East Northport, pursuant to a search warrant, is 3 that correct? 4 Yes, sir. 5 Did you read the search warrant before you 6 entered the premises? 7 Yes, sir. 8 And did the search warrant in any way, indicate 9 to you who the owner of these premises were? 10 Yes, sir. 11 Do you recall who the owner of that address 12 or those premises were? 13 Charles Indiviglia, sir. 14 Not Tom Matteo? 15 No, sir. 16 When you got to these premises, you found this 2 17 equipment in the house, is that correct? 18 A Yes, sir. 19 Could you tell the Court where the bulk of this 20 was found, what part of the house? 21 Well, this particular box, the stuff in the 22 shopping bag, was found in the northeast bedroom closet 23 up on the top shelf, sir. Would you describe the premises, what time 25 -- what type of house was it?

1 Mattio - cross 2 A 3 Have you ever been in the Club International 4 on West 48th Street? 5 A Yes. 6 Q Did you frequent that club quite a bit? 7 No. 8 About how often would you be there? 9 Once a month. 10 What about the Oasis Bar? 11 2, 3, maybe 4 times a week. 12 Did you spend a lot of time there? 13 No. 14 And what would you go there for? Just to 15 pick up? 16 A Just for picking up numbers. 17 Q No other reason? 18 No. 19 What about the Club International? What was your purpose of going there? 20 21 I had a few friends that hung out there. 22 Who were your friends that hung out at the 23 Club International? 24 Michael McCormack and a few people that

aren't involved in this case, if you want to know their

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1 Mattio - cross 2 names. 3 Q Tell me their names? 4 Pobby, the fellow that is the manager, the 5 Frank Breen used to go there. day manager. 6 What about Joseph Abbruzzo? You know him? 2 7 A Who? 8 0 Joseph Abbruzzo. 9 Λ No. 10 A guy about 5-8, rather lean, very nervous? Q 11 A No. 12 0 You don't know him? 13 A No. 14 Never met him, to your knowledge? 15 I may have, I don't know. There are a lot 16 of people in there. 17 2 So you know Frank Breen? 18 A Yes. 19 2 Was Frank Breen in the narcotics business at 20 any time that you know of? 21 Not that I know of. A 22 2 Not that you know of? 23 ٨ Not that I know of.

You never dealt in heroin with Frank Breen?

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MR. WEINTRAUB: That is correct.

MR.KROHN: I think he has a right to ask that question.

THE COURT: All right, seat the jury.

(The jury thereupon returned to the courtroom.

THE COURT: Mr. Weintraub.

MATTIO, recalled as a witness,

having previously been duly sworn, resumed the stand and testified further as follows:

CROSS EXAMINATION

BY MR. WEINTRAUB: (continuing)

Directing your attention, Mr. Mattio, to the day you were arrested, do you recall that after you were in Mr. Richie's office, you went up to the Magistrate's courtroom?

A Yes.

In the Magistrate's courtroom, you had a discussion with an agent named Schnepper from the Drug Enforcement Administration. Do you recall that?

A Yes.

2 In that conversation, do you recall that Agent Schnepper said to you that he was aware that you had done 50 to 10 kilograms of heroin at a time but wanted to know what Indiviglia was doing, and that you responded

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Mattio - cross

that Individlia was doing 30 to 40 kilograms at a time.

Do you recall that conversation?

- A Yes.
- ? Is that what you said?
- A Yes, that's right.
- Q Did you also state that Indiviglia had lost his European connection a while ago, because the connection had gotten jammed up with the police in France?
 - A Right.
 - 9 You told him that?
 - A Yes, sir.
- ? Did vou have a meeting in the spring of '71 in the Club International for the purpose of arranging a purchase of narcotics?
 - A No.
 - O Did you ever have such a conversation?
 - A (Witness shakes head.)

THE COURT: You have to answer vocally, Mr.

'lattio.

THE WITNESS: No.

THE COURT: No grimaces, Mr. Weintraub.

- O Do you know Linda Pizzella?
- A No.
- O Have you ever met her?

Averso-direct

3 1 I was convicted of two conspiracies to smuggle A 2 heroin. 3 And did you plead guilty or did you --2 4 A I pleaded guilty. 5 In both cases? Q 6 A Yes. 7 C When was that? 8 I pleaded guilty in May 1973. A 9 Did you testify in either of those cases? Q 10 Yes, I did, once. 11 Q In one case? 12 A In one case. 13 Q And how long is your sentence? 14 Three years and ten years special parole. A 15 Q Were you ever convicted of a crime previous to 16 that? 17 A No convictions. 18 Q No convictions? 19 No, no, sir. 20 Do you know an individual named Thomas Matteo Q 21 at the table? 22 Yes, I do. V 23 Do you see him in court? 24

Yes.

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Averso-direct

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Q Will you point him out for us?

Yes, he is behind you (indicating).

THE COURT: Will you stand up, please -- in the light jacket (addressing spectator).

(Spectator rises.)

THE COURT: Will you go down and pick out the man you picked out as Thomas Matteo.

THE WITNESS: This man (indicating).

Q Are you certain of that?

THE COURT: Will the gentleman whom he picked out stand up.

(Spectator rises.)

THE COUPT: All right, will you please sit down.

Now, look around the courtroom.

THE WITNESS: No, sir, that is the man right there. (Indicating.) I am mistaken.

THE COURT: Will you please stand up, Mr. Matteo.

And will you please stand up (indicating spectator).

Let the record show that the witness first picked out -- your name, please?

SPECTATOR: Philip Hayward.

THE COURT: And now is pointing to the defendant Thomas Matteo.

What is the name of the bar?

International Bar, 48th Street.

And what if anything took place in that bar?

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A Well, Mr. Matteo was drunk. And he asked me if he could have a bite to eat with me. And we went for a bite to eat. And then he asked me if he could stay up in my apartment.

- Q Did you return to your apartment with Mr. Matted?
- A Yes, sir.
- Q You did?
- A Yes, sir.
- Q Did you have any conversation in your apartment?
- A Yes.
- 2 All right, will you relate as best you can remember the conversation you had.

A To the best of my recollection he says that his brother-in-law run away with \$50,000. And he had a little trouble with his wife. I asked him, "How did he got so much money?"

And he told me that he made money with drugs.

- Q Did you do anything in response to that conversation?
 - A Yes, sir.
 - What did you do after that?
- A Well, I also was involved with a Mr. Louis
 Boise that we were involved in smuggling heroin into the
 United States. And I asked him if he was interest to buy.

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Q You asked who if he was interested to buy?

A I asked Mr. Matteo if he was interest to buy because I also was involved with Mr. Boise, and Mr. Boise would sell heroin.

- Q What did Mr. Matteo say?
- A He said, "Yes."
- O Did anything else happen after that?
- A Well, yes.

And he said, "Yes."

- Will you tell us what happened.
- A A few days later also by the bar I introduced him to Mr. Boise and they were talking.
 - Q Were you able to hear the conversation?
 - A No, I did not, sir.
 - Q Did mything happen after that?
- A Yes, a couple of days later Mr. Boise asked me
 if I could stay up in my apartment in the afternoon. He would
 let me make a couple of bucks.

I said, "Yes, sir."

At the end of June -- by the end of June 1971 -- excuse me -- he come up about in the afternoon and --

- Q Who came up?
- A Mr. Boise came up in the afternoon and he said that Mr. Matteo is supposed to come up with the money. And

he was waiting for him. So about after 2 o'clock -- I don't know exactly the time -- Mr. Matteo came up with a shopping bag full of money, turned him over to Mr. Boise.

Mr. Boise left alone.

After about an hour or so he come back with the shopping bag full of drugs.

Mr. Matteo pick up one package. He opened up a little bit. He pick up a little bit with the hand and he put it by his nose. And he pick up the bag and he left.

Oid he say anything after he smelled or put the material up to his nose?

A Well, he says -- Mr. Matteo also told me that he had to give him about a couple of hours after he picked up the bag that he could test the stuff if it was all right.

So after he left, Mr. Boise left right after him.

I says, "Mr. Boise, are you going to wait for the phone call?"

He says, "You have got nothing to worry about. It's good stuff."

So after a couple of hours Mr. Matteo called me up and said everything was O.K.

Q Did you have any other contact with Mr. Matteo after that involving narcotics?

A Yes. The last time I saw Mr. Matteo was about

may, if you wish, accept so much of the testimony as you believe is credible and just reject that which you recognize as being false. It simply underscores the wide discretion the jury has in dealing with the credibility of witnesses.

Mr. Ritchie testified that this defendant made certain statements to him on the day of his arrest, which date escapes my memory but that is not important at the moment.

Evidence relating to any statement claimed to have been made by defendant after a crime has been committed should always be considered with caution and weighed with great care.

(Continued on next page)

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All such evidence should be disregarded unless the evidence in the case convinces the jury beyond a reasonable doubt that the statement was knowingly and voluntarily made. In other words, the Government must prove to you beyond a reasonable doubt that the defendant was aware of the statement he made; that it wasn't through pure inadvertence or mistake, or some misunderstanding. In determining whether a statement was knowingly and voluntarily made, the Government must prove beyond a reasonable doubt that he was advised of his Constitutional Rights and he was warned of the consequences of any statement he might make, in other words, he had a right to remain silent; that if he said anything it could be used against him in any Court of Law; and that he was entitled to counsel and if he couldn't afford counsel the Court would supply one without cost; if he started answering questions he could stop at any time and ask for counsel. In determining whether any statement claimed to have been made by the defendant outside of court was knowingly made, the jury should consider the age, intelligence, and all the circumstances under which che statement was made. If the evidence in the case does not convince you beyond a reasonable doubt that the statement was voluntarily and intentionally made,

you should disregard it entirely. On the other hand
if the evidence in the case does show that the stateme
was knowingly and voluntarily made, and that again
by proof beyond a reasonable doubt, then you give it
such weight as you think it deserves.

There was another statement which the defendant said he made to Mr. Schnepper on the day he was arraigned before the Magistrate. And there again you would determine whether the statement was knowingly and voluntarily made under the same test I gave you as to the alleged statements made to Mr. Ritchie.

To fully understand the nature of the charge in the indictment, you should know something about the Drug Abuse and Control Act of 1970. It was enacted in 1970 but it became effective on May 1, 1971. I want you to keep that date in mind, May 1st, 1971.

Most of the statutory law enacted by the Congress is codified. This happens to be Title 21 Food and Drugs. That is why you will see the reference to Title 21 here. The indictment must be based on a claimed violation of a statute because it is Congress that determines what is a crime.

Congress enacted legislation which strictly controlled the importation, the manufacture, the distribution, the sale, the transportation and the

the conspiracy or to the operation of the conspiracy.

Now of course I will say here emphatically that of course Mr. Mattio denies all this. He said so in his general denial. I do not say by reciting the outline of what a chain conspiracy is that the Government has established it. I just expect that that will clarify the thinking in your mind because others too were mentioned. Mr. Aguiar mentioned two people whom he had dealt with in the heroin business. I would be favored by your reminding me of the names

MR. KROHN: O.K.

THE COURT: No. I will say that MR. Tyler

Somas — it is the position of the Government that

he was a member of this conspiracy.

MR. WEINTRAUB: Ripples?

that. But at any rate there is no connection between those individuals and the conspiracy. The testimony is brought out to show Mr. Aguiar's dealings. The same may be said of Mr. Averso's testimony and his reference to a Mr. Boyce. If you remember his testimony he testified that he had a transaction at the International Bar. That is only offered to challenge the credibility of Mr. Mattio and in no way was intended to establish the conspiracy. That was a separate

transaction. You may consider it only on the limited issue as to the believability of Mr. Mattio's testimony. And I do not tell you to believe Mr. Averso or to disbelieve Mr. Mattio. I just say that that is the purpose of Mr. Averso's testimony and that it is limited to that.

The Government must prove beyond a reasonable doubt that the conspiracy alleged in the indictment is established at or about the times alleged and for the purposes set forth in the indictment.

They must also prove beyond a reasonable doubt that the defendant knowingly and wilfully became a member of the conspiracy, in other words, that he was aware of what he was doing; that he was aware of the purposes of the conspiracy; that he knew it was to deal in heroin; and that he knew it was unlawful to receive, conceal, buy, sell, facilitate the transportation and concealment of heroin, and that knowing that it was unlawful he nevertheless voluntarily and intentionally entered into the conspiracy.

The Government must also prove beyond a reasonable doubt that one of the conspirators thereafter, after the conspiracy was formed, knowingly committed an overt act for the purpose of furthering the objective of the conspiracy. In other words, the

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THE COURT: Please ask the Jury to come in.

MR. WEINTRAUB: The transcript shows at line 24 "had done fifty to ten kilograms." I would dispute that.

THE COURT: Hold the Jury.

MR. WEINTRAUB: It is my recollection it is five to ten.

THE COURT: That should be five to ten.

MR. KROHN: I have no objection.

THE COURT: Thank you.

(Jury present.)

THE COURT: I have Mattio's testimony given to Schnepper. It begins at page 612, line 13, by Mr. Weintraub.

(Testimony read.)

I only give you as much as you ask for. That completes the conversation that Mr. Mattio testified that he had with Schnepper. The Jury is excused.

(Continued on next page.)

(After recess.)

(The following occurred in the absence of the jury at 4:50 o'clock p.m.)

THE CLERK: Note from jury marked Court's Exhibit 6 for identification.

(Document referred to was received and marked Court's Exhibit 6 for identification.)

THE COURT: Are we ready? We have a verdict,
Mr. Weintraub?

MR. WEINTRAUB: Yes, your Honor.

THE COURT: Please seat the jury.

(The jury thereupon returned to the courtroom at 4:55 o'clock p.m.)

THE COURT: Mr. Foreman, will you please stand.

(The foreman complies.)

THE COURT: I have your note saying that you have arrived at a verdict.

In United States of America against Thomas
Mattio, how do you find the defendant, guilty or
not guilty?

THE FOREMAN: Guilty.

THE COURT: Thank you. Will you please be seated.

Juror No. 2, you have heard the verdict as rendered by the foreman. Is that your verdict?

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff-Appellee, NOTICE OF APPEAL

-against-

Indictment No. 74 CR 504

THOMAS MATIEO,

Defendant-Appellant.

-----X

Name and Address of Appellant: THOMAS MAINTED

31 Millford Drive Central Islip, New York 11722

Reme and Address of Attorneys for Appellant:

PREMINGER, MEYER & LIGHT 66 Court Street Brooklyn, New York 11201

Offense:

Violation of 21 U.S.C., Sections 812, 841(a) (1) and 841 (b) (1) (A), conspiracy to conceal, buy and deal in narcotics.

Appellant appeals from the judgment of conviction, convicting him of the above charges rendered October 4, 1974, (Mishler, C.U.S.D.J.), and sentencing him to a term of imprisonment of ten years and special probation of five years thereafter.

Appellant is at liberty and has been continued in bail in the sum of \$75,000.00.

Appellant hereby appeals to the United States Court of Appeals for the Second Circuit from the whole and each and every part of the above stated judgment.

Dated: Brooklyn, New York October 7, 1974

Yours, etc.,

PREMINGER, MEYER & LIGHT Attorneys for Defendant-Appellant Office & P.O. Address 66 Court Street Brooklyn, New York 11201

TO: Clerk of the United States District Court Eastern District of New York 225 Cadman Plaza East Brooklyn, New York 11201

> Hon. David G. Trager United States Attorney Eastern District of New York 225 Cadman Plaza East Brocklyn, New York 11201

EASTERN DISTRICT OF NEW YORK OCT 4 1974

United States of America

v. No. 74 CR 122

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On this 4th day of October , 1974 came the attorney for the government and the defendant appeared in person and with counsel

IT IS ADJUDGED that the defendant upon his placement a verdict of guilty

THOMAS MATTEO

has been convicted of the offense of violating T-21, U.S.C.Secs. 173, 174, 841, 846 and T-18, U.S.C.Sec. 2, in that on or about and between Oct. 1, 1967 and Sept. 27, 1972, both dates being approximate and inclusive, the defendant, with others, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to receive, conceal, buy and sell and facilitate the transportation of narcotic drugs, to wit, heroin, the exact amount thereoff being to the Grand Jury unknown after the said drugs had been imported and brought into the U.S. contrary to law and to distribute and possess with intent to distribute same

as charged3

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT Is ADJUDGED that the defendant is guilty as charged and convicted.

It is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 10 years and a special parcle 5 years

IT IS ADJUDGED that5

It is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Durch Michler

Service of three (3) copies of the within

App Appendit is hereby admitted

this 19th day of December 1974

Chale Laboration

Attornev(s) for by Cook Donada

(Secretary)

RECEIVED